

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

74-2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-2023

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

v.

CAPITAL COUNSELLORS, INC., CAPITAL ADVISORS, INC.,
J. IRVING WEISS, ABRAHAM B. WEISS,

Defendants.

CONBOY, HEWITT, O'BRIEN & BOARDMAN,

Appellant,

SYDNEY B. WERTHEIMER,

Receiver-Appellee.

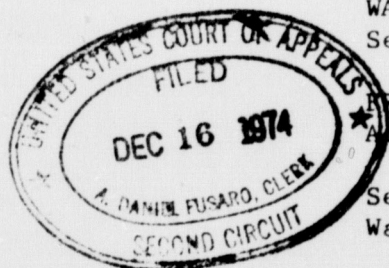
On Appeal From The United States District Court
For The Southern District Of New York

SUPPLEMENTAL APPENDIX OF THE
SECURITIES AND EXCHANGE COMMISSION, APPELLEE

WALTER P. NORTH
Senior Assistant General Counsel

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Attorney

Securities and Exchange Commission
Washington, D.C. 20549



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

CAPITAL COUNSELLORS, INC.

CAPITAL ADVISORS, INC.

J. IRVING WEISS

ABRAHAM B. WEISS

Defendants.

71 Civil Action
File No. 1390

ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING
ORDER AND AFFIDAVITS

On motion of the plaintiff, Securities and Exchange Commission, and upon the complaint herein and the affidavits of Paul V. Mifsud and John M. Bennett annexed hereto and the appendix filed herein, and all other papers and prior proceedings herein, and it appearing that the defendants Capital Counsellors, Inc., Capital Advisors, Inc., J. Irving Weiss and Abraham B. Weiss, pending final determination of this action will, unless restrained, continue to engage in acts and practices in violation of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, 15 U.S.C. 77e(a), 77e(c) and 77q(a), Sections 8(c), 10(b), 15(c)(1), 15(c)(3) and 17(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78h(c), 78j(b), 78o(c)(1), 78o(c)(3) and 78q(a) and Rules 17CFR 240.8c-1, 10b-5, 15c1-4, 15c3-1, 15c3-2, 17a-3 and 17a-4 thereunder and Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-6(1), 80b-6(2) and 80b-6(4) and Rule 17CFR 275.206(4)-1 thereunder, and that immediate and irreparable injury, loss and damage will result to the customers of defendants and to members of the investing public, it is hereby

I

ORDERED that defendants Capital Counsellors, Inc., Capital Advisors, Inc., J. Irving Weiss and Abraham B. Weiss show cause, if any there be, to a Judge of this Court at 10:00 o'clock A.M. on [March] 30, 1971, Room 506 of the U.S. Court-house, Foley Square, New York, New York, or as soon thereafter as the matter can be heard, why a preliminary injunction as requested by the plaintiff Securities and Exchange Commission pursuant to Rule 65 of the Federal Rules of Civil Procedure should not be granted and a receiver appointed for Capital Counsellors, Inc. and Capital Advisors, Inc.;

II

ORDERED that pending determination of the plaintiff Securities and Exchange Commission's motion for a preliminary injunction and the appointment of a receiver as requested herein the defendants and their officers, directors, agents, servants, employees, attorneys, successors and assigns and those persons in active concert or participation with them, and each of them, be and they hereby are restrained from, directly and indirectly:

A. Making use of any means or instrumentalities of interstate commerce and of the mails, in the offer and sale of United States Treasury Bills, United States Government Bonds, investment contracts known as the defendants' Bond Plan or any other securities issued or to be issued by defendants, their subsidiaries or affiliates, or any other securities, to employ any device, scheme or artifice to defraud, to engage in any transaction, practice or course of business which operates or would operate

as a fraud or deceit upon any purchaser, or to obtain money or property by means of untrue statements of material facts or omissions to state material facts, necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, including but not limited to:

- (1) the safety and degree of risk entailed in purchasing the securities;
- (2) profits to be derived from the purchase of the securities;
- (3) the use of proceeds derived from the sale of securities;
- (4) the business and operation of the issuer of the securities;
- (5) the refund or return of proceeds invested in the securities;
- (6) supervision of the issuer of securities by regulatory agencies;
- (7) the true equity position of investors in the securities;
- (8) the need for haste to make investment in the securities; and
- (9) the amount of money required for an investment in the securities.

B. Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of any prospectus or otherwise, investment contracts in the form of the defendants' Bond Plan, or any other securities issued or to be issued by defendants, their subsidiaries or affiliates, or any other securities, unless and until a registration statement has been filed with the Securities and Exchange Commission as to such securities, or while a registration statement filed with the Securities and Exchange Commission as to such securities is the subject of a refusal order or stop order of the Securities and Exchange Commission, or (prior to the effective date of the registration statement), any public proceeding or examination under Section 8 of the Securities Act of 1933.

C. Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell investment contracts in the form of the defendants' Bond Plan or any other securities issued or to be issued by defendants, their subsidiaries or affiliates, or any other securities, through the use or medium of any prospectus, or otherwise, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities.

D. Carrying such securities or causing them to be carried through the mails or in interstate commerce by any means or instruments of interstate transportation for the purpose of sale or delivery after sale, unless and until a

registration statement is in effect with the Securities and Exchange Commission as to such securities, Provided, however, that nothing in paragraphs II B, C and D of the foregoing portion of the requested injunction shall apply to any security which is exempt from the provisions of Section 5 of the Securities Act of 1933, 15 U.S.C. 77e.

E. Violating or aiding or abetting violations of Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-6(1), 80b-6(2) and 80b-6(4) and Rule 206(4)-1 thereunder in connection with the writing, publishing and distributing of articles, recommendations, news items, telegrams and other publications to investors and potential investors, clients, potential clients of Advisors and others suggesting and recommending the purchase, retention and sale of various securities and not disclosing in connection therewith certain material facts including but not limited to:

- (1) the true amounts and nature of the fees involved in defendants' programs;
- (2) the exorbitant nature of the fees;
- (3) the extent of losses incurred by previous investors;
- (4) the true and full nature of risks involved in defendants' programs;
- (5) the profits to be derived from such programs;
- (6) the use of hyperbole; and
- (7) the use of one-sided testimonials.

F. Violating or aiding and abetting violations of Section 15(c)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(3) and Rule 15c3-1 thereunder by making use of the mails and means of instrumentalities of interstate commerce to effect transactions for the accounts of customers while the aggregate indebtedness of defendant Capital Counsellors, Inc. to all other persons exceeds 2,000 (two thousand) per centum of its net capital.

G. Violating or aiding and abetting violations of Section 8(c) of the Securities Exchange Act of 1934, 15 U.S.C. 78h(c) and Rule 8c-1 thereunder by transacting business through the medium of a member of national securities exchange while directly or indirectly hypothecating or arranging for or permitting the hypothecation of securities carried for customers of defendant Capital Counsellors, Inc., under circumstances that permit customers securities carried for the account of customers to be hypothecated, or subject to any lien or liens or claim or claims of the pledgee or pledgees for a sum which exceeds the aggregate indebtedness of all customers in respect to securities carried for their accounts.

H. Violating or aiding and abetting violations of Section 17(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78q(a) and Rules 17a-3 and 17a-4 thereunder by failing to make, keep accurate, complete and current and preserve the general ledger, blotters, customer ledger, stock record and other records of defendant Capital Counsellors, Inc.

I. Violating or aiding and abetting violations of Section 15(c)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(3) and Rule 15c3-2 thereunder by using funds arising out of free credit balances carried for the accounts of customers in connection with the operation of defendant Capital Counsellors, Inc. without establishing adequate procedures pursuant to which each customer for whom a free credit balance is carried is sent a written notice that such funds are not segregated and may be used in the operation of the business of said defendant.

J. Violating or aiding and abetting violations of Section 15(c)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(1) and Rule 15c1-4 thereunder by engaging in acts designed to effect with or for the accounts of customers of defendant Capital Counsellors, Inc. transactions in and/or to induce the purchase or sale by such customers of securities (other than U. S. Tax Savings Notes, U. S. Defense Savings Stamps or U. S. Defense Savings Bonds, Series E, F and G) without, at or before the completion of each such transaction, giving or sending customers written notification.

III

ORDERED that defendants Capital Counsellors, Inc., Capital Advisors, Inc., J. Irving Weiss and Abraham B. Weiss and their officers, directors, agents, servants, employees, attorneys, successors, assigns, depositories and banks, and those persons in active concert or participation with them,

and each of them, except such receiver or trustee as the Court may appoint, for defendants Capital Counsellors, Inc. and Capital Advisors, Inc. be and they hereby are restrained from, directly or indirectly, transferring; setting off, receiving, changing, selling, pledging, assigning or otherwise disposing or withdrawing any assets and property owned controlled or in the possession of defendants Capital Counsellors, Inc. and Capital Advisors, Inc. except as may be directed or approved by any receiver or trustee appointed herein.

IV

—ORDERED that defendants Capital Counsellors, Inc., Capital Advisors, Inc., J. Irving Weiss and Abraham B. Weiss and their officers, directors, agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them, and each of them, be and they hereby are restrained from, directly or indirectly, soliciting, initiating, accepting or engaging in any transaction or undertaking or creating any contractual commitment of or in behalf of or for the accounts of defendants Capital Counsellors, Inc. and Capital Advisors, Inc., except as may be directed or approved by any receiver or trustee appointed herein.

V

ORDERED that all creditors of defendants Capital Counsellors, Inc. and Capital Advisors, Inc., and all other persons, firms, and corporations, including sheriffs, marshals and other officers and their deputies, and the respective

attorneys, servants, agents and employees of any and all such persons, firms or corporations are stayed and restrained from commencing, prosecuting, continuing or enforcing any suit or proceeding, other than any proceeding instituted or to be instituted by plaintiff Securities and Exchange Commission, or any receiver or trustee which the Court may appoint herein, or from executing or issuing or causing the execution or issuance of any Court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property owned by or in the possession of said defendants, or the receiver or trustee which the Court may appoint herein, wheresoever situated, and from doing any act or thing whatsoever to interfere with the possession or management of said receiver or trustee of the property and assets owned, controlled or in the possession of said defendants, or in any way interfere with said receiver or trustee in the discharge of his duties herein, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over said defendants.

VI

ORDERED that pending the request for the appointment of a receiver herein any pending bankruptcy, mortgage foreclosure, equity receivership, or any other proceeding to reorganize conserve or liquidate defendants Capital Counsellors, Inc. and Capital Advisors, Inc. or their property and any

proceeding to enforce a lien against the property of said defendants and any customers' securities pledged as collateral for any loan by said defendants and all other suits of any kind which are pending against said defendants shall be stayed except for this present action.

VII

ORDERED that ~~defendants shall transmit the text of~~ Section I through VI of this Order by mail to each of their customers on or before 10 o'clock a.m. Eastern Standard Time, ~~March, 1971.~~ JMC

ORDERED that service of the within Order to Show Cause and Temporary Restraining Order shall be effected upon the defendants on or before 5:00 o'clock p.m., March 26, 1971.

Service of this Order, Summons and Complaint, Affidavit and Memorandum of Law herein may be made by representatives of plaintiff Securities and Exchange Commission.

VIII

ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

s/ John M. Connella
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
March 25, 1971

4:30 p.m.

NOV 18 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

--against--

CAPITAL COUNSELLORS, INC.
CAPITAL ADVISORS, INC.
J. IRVING WEISS
ABRAHAM B. WEISS

Defendants.

71 Civil Action
File No. 1390

STIPULATION, UNDERTAKING
AND ORDER MODIFYING AND
EXTENDING TEMPORARY
RESTRAINING ORDER

U.S. DISTRICT COURT

FILED

APRIL 5, 1971

S.D. 61128

WHEREAS, the plaintiff Securities and Exchange Commission brought this action to restrain and enjoin the defendants Capital Counsellors, Inc., Capital Advisors, Inc., J. Irving Weiss and Abraham B. Weiss from violating certain provisions of the Federal securities statutes, rules and regulations thereunder and for other relief; and

WHEREAS, on March 25, 1971, United States District Judge John M. Cannella of the United States District Court for the Southern District of New York entered an Order to Show Cause and Temporary Restraining Order against the defendants herein; and

WHEREAS, plaintiff's motion for a preliminary injunction against said defendants having come to be heard before United States District Judge Irving Ben Cooper on March 30, 1971, and having been taken under advisement;

IT IS HEREBY STIPULATED, CONSENTED, AND AGREED by and between the plaintiff and all defendants and their respective attorneys that this Stipulation, Undertaking, and Order and the Temporary Restraining Order signed by Judge Cannella on

March 25, except as modified by Judge Cannella's Order of March 26 and as specifically modified hereinafter, are to remain in full force and effect up to and including a final disposition by this Court of plaintiff's motion for a preliminary injunction.

IT IS FURTHER STIPULATED, CONSENTED AND AGREED by and between the plaintiff, and all defendants and their respective attorneys that:

- (1) An escrow account entitled "Customer Indemnity Account" ("Indemnity Account") shall be established by the individual defendants J. Irving Weiss and Abraham D. Weiss for the benefit of all customers of the corporate defendants; *per [unclear]* funds deposited in the Indemnity Account under the circumstances hereinafter described shall be obtained exclusively from the personal assets *of [unclear]* of the individual defendants-J. Irving Weiss and Abraham D. Weiss and shall be used to indemnify the customers of the corporate defendants from any depletion of their securities, free credit balances and other assets in the hands of the defendants their officers, directors, agents, servants, employees, attorneys, successors and assigns, and those in active concert and participation with them, due to any act of the defendants as of 4:30 p.m. on March 25, 1971. Disbursement or other disposition shall be made from the Indemnity Account only by further order of this Court. For purposes of this Stipulation "customer"

shall not include creditors but shall include that term as defined by Rule 8c-1(b)(1) promulgated under Section 8(c) of the Securities Exchange Act of 1934 (except that no customer shall be excluded from this definition solely by reason of an act of unlawful hypothecation by the defendants herein.) The Indemnity Account fund as hereinafter established may be offset by any sums received by defendants for renting customer lists or for fees received in connection with the Atlantic Fund for Investment in United States Government Securities or for the accrued portions of renewals of Money & Credit Reports by subscribers who have been furnished with copies of all litigation releases to the date of the renewal.

- (2) This Court is requested to appoint a fiscal agent for the corporate defendants to serve until the Court makes a final determination of plaintiff's request for the appointment of a receiver for the corporate defendants. The fiscal agent is authorized and empowered to:
- (a) cancel all loans pertaining to the Government Bond Plan ("Bond Plan");
 - (b) sell all Treasury Bills which pertain to the Bond Plan and apply the proceeds of these sales against the loans which they collateralize;
 - (c) collect all monies which remain after steps (a) and (b) above are completed, and deposit the same in an interest-bearing escrow

account to be established at a bank in New York City for the benefit of public investors in the Bond Plan as their interest shall appear after audit hereinafter described;

- (d) conserve all other funds and investments of all public customers of the defendants;
- (e) take possession of all the books and records of the corporate defendants and conduct a certified audit of those books and records and oversee and account for all receipts and disbursements of the defendant corporations;
- (f) employ such accountants or attorneys and others as may be necessary in connection with the discharge of his duties above described; and
- (g) lending institutions are authorized and empowered to engage in steps acts described in sub-paragraphs (a) and (b) of this paragraph, and shall retain all monies which remain after these acts are completed for the benefit of public customers of the defendant corporations until receipt of further instructions from the fiscal agent.

- (3) Defendants will bear all fees and expenses of the fiscal agent and his employees. Any payments made pursuant to this Stipulation, Undertaking

and Order shall result in a like sum being deposited in the Indemnity Account and shall in no way impair funds held by the defendants for customers.

- (4) The corporate defendants may retain and pay such employees as they deem necessary and disburse such funds as they deem necessary for office and other expenses provided that all expenses so incurred shall be paid for in full by the corporate defendants and shall in no way impair any funds owing to any public customers. All expenses herein shall be indemnified by deposits in the Indemnity Fund by the individual defendants J. Irving Weiss and Abraham B. Weiss.
- (5) The fiscal agent shall report all receipts and disbursements by the corporate defendants to this Court, and copies of said reports are to be furnished to the Securities and Exchange Commission at its New York Regional Office, by 10:00 a.m. each Wednesday, to speak as of the close of business the preceding Friday. Similarly, reports shall be submitted as to the condition of all escrow accounts.
- (6) The defendants may continue their respective lawful functions in conjunction with the Atlantic Fund for Investment in United States Government Securities provided however, that this Stipulation is in no way construed to impair that portion

of the Restraining Order with respect to conducting business while not in compliance with the Net Capital requirements of Section 15(c)(3) of the Securities Exchange Act of 1934 and Rule 15c3-1 thereunder and the penalties in connection therewith including but not limited to contempt of Court or any other penalty for violation thereof. In connection therewith all the defendants have been advised that it is still the plaintiff Commission's position notwithstanding the affidavit of William Swedlow dated March 30, 1971 that the defendant Capital Counsellors, Inc. is not in compliance with the aforesaid Rule 15c3-1.

- (7) The individual defendants shall initially fund the Indemnity Account with a deposit of \$7,000 by the next business day after the signing of this Order. Each succeeding required deposit shall be made prior to or simultaneous with the related expense item. This paragraph (7) is subject to the offsetting credits in paragraph (3) hereof.
- (8) Capital Advisors' publication - Money & Credit Reports - may continue to be published and mailed to clients who were subscribers as of the last mailing, provided that these subscribers receive copies of all Commission litigation releases pertaining to this matter (one copy of each of which will be furnished to the defendants) with the separate notation that the defendants deny the allegations and are requesting a hearing of the

facts; and provided further that all expenses incurred directly or indirectly therewith will be bonded by a sum equal to these expenses being deposited in the Indemnity Account.

- (9) All opposing papers are to be served upon the plaintiff by 4:00 p.m. Friday, April 9, 1971.
- (10) This Court shall retain jurisdiction of this matter for all purposes, including the power to appoint an attorney to assist the parties, if needed.
- (11) No tender, offer, promise, or threat of any kind has been made by plaintiff, Securities and Exchange Commission, or any member, officer, agent or representative thereof in consideration for this Stipulation, Undertaking and Order.

CAPITAL COUNSELLORS, INC. AND
CAPITAL ADVISORS, INC.

By

J. Irving Weiss
J. IRVING WEISS

By

Abraham B. Weiss
ABRAHAM B. WEISS

J. Irving Weiss
J. IRVING WEISS, Individually

Abraham B. Weiss
ABRAHAM B. WEISS, Individually

David A. Mountain
DAVID MOUNTAIN, ESQ.
Counsel for all Defendants.

Kevin Thomas Duffy
KEVIN THOMAS DUFFY, ESQ.
Counsel for Plaintiff

SO ORDERED:

Henry B. ...
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
April 8, 1971

3:30 P.M.

I hereby certify that a true and correct copy of this Order has been filed with the Clerk of the United States District Court for the Southern District of New York.

Henry B. ...

SECURITIES AND EXCHANGE COMMISSION v. CAPITAL COUNSELLORS,
INC., et al. - 71 Civ. 1390

The within appointment of Arthur Anderson & Co. as fiscal agent is vacated. Sydney B. Wertheimer, Esq., 1501 Broadway, New York, New York, is hereby appointed fiscal agent.

I hereby appoint Haskins & Sells, 2 Broadway, New York, New York, as accountant to conduct a certified audit as provided for by section 2(c) of this order.

SO ORDERED:

New York, N.Y.
April 8, 1971

U.S. DISTRICT COURT
S. D. OF N. Y.
APR 8 1971

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

CAPITAL COUNSELLORS, INC.
CAPITAL ADVISORS, INC.
J. IRVING WEISS
ABRAHAM D. WEISS

Defendants.

STIPULATION, UNDERTAKING AND
ORDER MODIFYING AND EXTENDING
TEMPORARY RESTRAINING ORDER

71 Civil 1390

KEVIN THOMAS DUFFY
Regional Administrator

Attorney for the Plaintiff
SECURITIES AND EXCHANGE COMMISSION
Office and Post Office Address:
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1636

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, : 71 Civil Action
File No. 1390
Plaintiff, :

-against- :

CAPITAL COUNSELLORS, INC., : ORDER FURTHER MODIFY-
CAPITAL ADVISORS, INC., : ING AND SUPPLEMENTING
J. IRVING WEISS, : TEMPORARY RESTRAINING
ABRAHAM B. WEISS, : ORDER

Defendants.

----- x

Upon the annexed affidavit of Sydney B. Wertheimer, the fiscal agent for the corporate defendants herein, sworn to May 7, 1971, upon the appended consents hereto of all of the defendants and their attorney, and Paul V. Mifsud and Roger M. Deitz, of counsel to the plaintiff, having appeared before me and stated, for the record, that plaintiff *has no objection to the entry of the within order, it is*

ORDERED, that the Order to Show Cause and Temporary Restraining Order of Judge John M. Cannella herein dated March 25, 1971, as modified by his further order herein dated March 26, 1971, as further modified and extended by the orders of Judge Irving Ben Cooper herein dated April 2, 1971 and April 8, 1971, filed April 5, 1971 and April 8, 1971, respectively, be, and the same hereby is further modified and supplemented as follows:

I. Sydney B. Wertheimer, the fiscal agent herein, is hereby designated as the sole signatory of the following time deposit accounts, presently in the name of "Sydney B. Wertheimer, as Fiscal Agent for Capital Counsellors, Inc., et al.":

<u>Depository Bank and Branch</u>	<u>Maturity Date</u>
The Chase Manhattan Bank, N.A. One Chase Manhattan Plaza New York, New York	May 19, 1971
The Chase Manhattan Bank, N.A. One Chase Manhattan Plaza New York, New York	June 1, 1971
First National City Bank 55 Wall Street New York, New York	June 10, 1971

and of such other or further time deposit accounts as he may open in his name as fiscal agent as aforesaid at either of the above banks or any other bank in New York City; and the fiscal agent shall have the full and sole authority and discretion to instruct the said banks with respect to the said accounts now or hereafter established, and to effect any withdrawals therefrom; all provided, however, that no such withdrawal may be made unless either (a) pursuant to further order of this Court or (b) for the purpose of purchasing from or through the bank from which such withdrawal is made its certificate(s) of deposit, which certificate(s) may bear such interest rate or be purchased at such yield as the fiscal agent in his discretion shall deem appropri-

ate, shall mature no later than sixty (60) days from the date of the fiscal agent's acquisition of the same and shall be left in the custody of the bank through or from whom it was acquired, until the same shall mature, be redeemed or sold as hereinafter provided. The fiscal agent is to have full power and discretion to sell or redeem (either at or prior to maturity) any such certificate at such time and terms as he may see fit and, also at his sole discretion, he may deposit the proceeds of such sale or redemption, or of any time deposit, in any other or further time deposit account at any bank in New York City or reinvest the same in a later-maturing certificate of deposit maturing in sixty (60) days or less, also to be maintained in the custody of the bank from or through which he may acquire the same.

II. All funds received by any one or more of the defendants from (a) renting customers' lists, (b) fees in connection with the Atlantic Fund for Investment in United States Government Securities, and (c) renewals of Money & Credit Reports shall be deposited by the recipient, immediately upon receipt thereof, in the account entitled "Capital Advisors, Inc.—Escrow" maintained at The Chase Manhattan Bank, N.A. and designated as account number 910-1-362342, and hereinafter referred to as "Advisors' Escrow Account".

III. The paragraphs numbered (4) and (5), at page 5, of the order of Judge Irving Ben Cooper herein dated April 2, 1971 and filed April 5, 1971, as heretofore modified and supplemented (hereinafter called the "April 2 Order") are hereby, effective forthwith, deleted in their entirety, and the following language substituted in their respective place and stead:

"(4) (a) The corporate defendants may retain and pay such employees as they deem necessary, and disburse such funds as they deem necessary for office and other expenses, all provided, however, that (i) no such defendant may incur any expense, or make any disbursement, unless for an activity herein permitted to be conducted by it and in accordance with the conditions and limitations, if any, upon such activity herein contained, including, without limitation, the approval by the fiscal agent of the employment of personnel if and to the extent such approval is herein required; and (ii) no disbursement be made, in any event, unless with the approval of the fiscal agent endorsed thereon in accordance herewith, or upon further order of this Court.

(b) The defendant Capital Advisors, Inc., in addition to such other rights to continue its activities as it may have hereunder, shall have the right to continue to rent and maintain customers'

"lists owned by it in the normal and usual course of its business. The said defendant, in connection with such activity, may employ only the minimum number of personnel consistent with the continued operation of its business as aforesaid. The defendants, or any of them, may also employ such personnel as the fiscal agent, in his sole discretion, may deem necessary or advisable, and may approve, (i) to perform caretaking functions in respect to the records pertaining to discontinued activities, such as the Government Bond Plan and the Put and Call Plan, (ii) to assist the fiscal agent and/or Haskins & Sells in the retrieval from or collation of information contained in such records or (iii) to perform such day-to-day bookkeeping functions as may be essential.

(c) The fiscal agent shall have the following authority and discretion in respect to the employment of the personnel by either or both of the corporate defendants. Such discretion shall be sole and unqualified, subject, however, to the right of any corporate defendant to apply to the Court, upon notice to the plaintiff and to the fiscal agent, for an appropriate change or modification in respect to the fiscal agent's exercise or non-exercise of such discretion in any particular instance:

"(i) The right to discharge, with or without cause, any employee of any corporate defendant upon such notice, if any, as the fiscal agent may deem necessary or appropriate;

(ii) The right to arrange, with any present employee, for a reduction in his or her number of hours per week or per day that such employee presently devotes to the business of his employer; provided, however, that there be a reduction in compensation on a pro rata basis, to reflect such reduction in hours; and

(iii) The right to approve the employment by either of the corporate defendants of any person to replace an employee who has died, resigned, or been discharged.

(d) Without limiting the authority and discretion of the fiscal agent as in (4) (c) above provided, the aggregate gross salaries paid by Capital Advisors, Inc. in respect to its activities, if any, permitted in respect to the Atlantic Fund for Investment, may not exceed \$200.00 per week."

"(5) (a) Defendant Capital Advisors, Inc. may, at periodic intervals, but not more often than weekly, draw upon the Advisors' Escrow Account and submit to the fiscal agent, for his approval as hereinafter provided, checks for payments the making of which it considers would not breach or violate any restraint imposed by the order herein dated March 25, 1971, as

heretofore or herein modified and/or supplemented. All checks so submitted shall be accompanied by an affidavit in the form and substance set forth as Exhibit 1 of this stipulation, and forming part hereof, which affidavit shall be executed by J. Irving Weiss and William Swedlow in their capacities more particularly therein set forth, with all blanks therein, and in the schedules annexed thereto, appropriately filled in. The checks submitted shall be listed in Schedule A of each such affidavit and there shall be appended to the said Schedule A the certification of Haskins & Sells to the effect that the disbursements therein listed are for expenses actually incurred by defendant Capital Advisors, Inc. for the respective purposes therein set forth. Each such affidavit, together with its annexed schedules and appended certification of Haskins & Sells, is hereinafter referred to as a "Check Approval Request". Prior to the submission of each Check Approval Request to the fiscal agent, the defendants shall cause a copy thereof to be personally delivered to the New York office of the Securities and Exchange Commission, 26 Federal Plaza, New York City, and proof or admission of such delivery, and the date and time thereof, shall be appended to the original thereof submitted to the fiscal agent. The fiscal agent, in his discretion, may vary the form of Exhibit 1 and/or of any schedule thereof, and/or may require such other or further affidavits or proofs as he may deem appropriate. Plaintiff's failure to object to any disbursement shall

"in no wise be deemed to exonerate defendants or any of them from any liability or responsibility with respect to such disbursement or the incurring of the relevant obligation thereof.

(b) The fiscal agent may, in his sole and unqualified discretion, either approve, or withhold his approval, in respect to any one or more checks listed in a Check Approval Request and, if acting in good faith, he shall have no liability or responsibility whatever with respect thereto (including, without limitation, any liability or responsibility to any creditor, stockholder or customer of any of the defendants. In the exercise of such discretion he may (but need not) rely, wholly or in part, on the truth of the statements made and data set forth in the referable Check Approval Request. The fiscal agent shall, however, defer approving any check included in a Check Approval Request until 12:00 noon of the day following the date of delivery of the copy thereof to the Securities and Exchange Commission, as reflected by the proof or admission of such delivery appended to or endorsed upon the original.

(c) The fiscal agent shall indicate his approval of any check by affixing his signature to the

"following legend, which shall be endorsed upon the face of the check and The Chase Manhattan Bank, N.A. is authorized and directed to honor any check bearing such endorsement and signed by the fiscal agent as aforesaid:

'APPROVED

SYDNEY B. WERTHEIMER, as Fiscal
Agent for Capital Counsellors,
Inc. and Capital Advisors, Inc.'

The fiscal agent shall return to Capital Advisors, Inc. any checks which he disapproves, with a brief explanation of his reasons for such disapproval. Despite any such disapproval of any such check, Capital Advisors, Inc. may, if it so elects, apply to the Court for the Court's approval thereof.

(d) Anything herein to the contrary notwithstanding, neither the approval of any check by the fiscal agent, nor the payment thereof by the drawee bank, shall in any wise absolve the defendants or any of them from any liability or responsibility which they might otherwise have in the event that the Court should determine that the withdrawal of funds effected by such check, or any act, matter or thing done or suffered to be done by the defendants or any of them which led to, or in any manner relates to, the issuance of such check,

"shall have been in breach of any restraining order of this Court then in effect."

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IV. Defendants J. Irving Weiss and Abraham B. Weiss, immediately upon the signing of the within order, shall deposit in the Advisors' Escrow Account (either as a capital contribution to Capital Advisors, Inc., or as a fully subordinated loan to it on such terms as may be approved by plaintiff) the sum of \$5,484.29. Defendant-Capital Advisors, Inc. shall forthwith pay to the fiscal agent, out of its aforesaid account number 910-1-362342 at The Chase Manhattan Bank, N.A., the sum of \$5,175.00 as and for the fiscal agent's fee for services rendered to and including Friday, April 30, 1971, and the further sum of \$5,334.50 to Haskins & Sells as and for its fee for services rendered, and disbursements incurred, through the same date. The said fee of the fiscal agent shall be exclusive of such disbursements as he has heretofore incurred, which disbursements shall be later computed and billed. The order herein of April 2, 1971, insofar as the same relates to the creation and purposes of the said "Indemnity Account", and offsets thereto, is hereby modified (a) so as to impress upon the said Indemnity Account a first lien and charge, prior to the rights of any public investors, customers or creditors of the defendants or any of them, in favor of the fiscal agent and Haskins & Sells, respectively, for their respective disbursements herein heretofore or hereafter incurred,

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and for their further fees herein for services rendered, and (b) so as to include, as additional offsets, the aforesaid sum of \$5,484.29 when and if paid, as hereinabove provided, and, also when and if paid, such additional sums, if any, as defendants J. Irving Weiss and Abraham B. Weiss may hereafter pay into Capital Advisors, Inc. as capital contributions or as fully subordinated loans on terms approved by the plaintiff. The fiscal agent and Haskins & Sells shall render their further billings on a weekly basis commencing with the week ending May 8, 1971, and each such bill shall be paid by defendants within five business days after the same has been rendered. If any fee or disbursement be disputed, the same shall be fixed by the Court. The obligation of the defendants to pay the disbursements, herein, and further fees herein, shall be joint and several, and such obligations may be enforced by the respective obligees with or without first resorting to the Indemnity Account.

V. Haskins & Sells are authorized to continue their audit of the condition of the corporate defendants, as of March 31, 1971, which is the date of the most recent fiscal year end of each such defendant, and to continue to perform such other services, if any, as the fiscal agent or Haskins & Sells may request from time to time by way of verification of the accuracy of any of the corporate defendants' current accounts or of any statements furnished to the corporate defendants or to the fiscal agent. The authority and discretion vested in the fiscal agent pursuant to subparagraphs (d) to (f), inclusive, of Paragraph (2) of the aforesaid April 2 Order as heretofore modified shall not be deemed to carry with it any obligation on his part to exercise the same, and he may exercise any such authority or discretion to such extent, and at such times, as he may determine.

VI. No withdrawal may be made from the Indemnity Account (The Chase Manhattan Bank, N.A. account number 910-1-362227) unless with the approval of the fiscal agent endorsed thereon or upon further order of this Court.

VII. The fiscal agent is hereby authorized to demand and receive from any creditor or former creditor of any of the corporate defendants (a) such paid notes or other negotiable instruments as such defendant may be, or may have been, entitled to receive upon payment of its indebtedness to such creditor, and (b) confirmations of sales of Treasury bills and statements of account, in such detail as the fiscal agent may reasonably request in order to facilitate audit of the corporate defendants' books of account.

VIII. The fiscal agent is further authorized to perform, or delegate the performance of, such work, if any, to incur such disbursements, such as telephone charges and cost of mailings, if any, as he may, in his discretion, deem necessary or appropriate in order to respond to inquiries by public investors in the Government Bond Plan and/or the Put and Call Plan, or others who have dealt with either of the corporate defendants, as to the status of the within proceedings, and/or to generally advise interested parties, from time to time, as to such status, by form letter or otherwise.

IX. As modified and supplemented hereby, the Order to Show Cause and Temporary Restraining Order herein dated

March 25, 1971, as heretofore modified and extended, shall remain in full force and effect.

Dated: New York, New York
May 7, 1971.

11:00 a.m.

Henry B. Hoffman
UNITED STATES DISTRICT JUDGE

The undersigned hereby consent to the foregoing order:

CAPITAL COUNSELLORS, INC. and
CAPITAL ADVISORS, INC.

By: *J. Irving Weiss*

J. Irving Weiss

By: *Abraham B. Weiss*

Abraham B. Weiss

J. Irving Weiss
J. IRVING WEISS, individually

Abraham B. Weiss
ABRAHAM B. WEISS, individually

David Mountain, Esq.
DAVID MOUNTAIN, ESQ.
Counsel for all Defendants

*Consent to report to
admiralty in bankruptcy
at 11:00 a.m.*

Henry B. Hoffman
Judge

United States District Court
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

against

CAPITAL COUNSELLORS, INC.,

CAPITAL ADVISORS, INC.,

J. IRVING WEISS, ABRAHAM B. WEISS,

Defendants.

71 Civ. 1390

**RECEIVER'S REPORT
 AND
 PETITION**

TO THE HON. IRVING BEN COOPER
UNITED STATES DISTRICT COURT:

The petition of SYDNEY B. WERTHEIMER, respectfully shows to the Court and alleges:

THE PROCEDURAL BACKGROUND

1. By Order of this Court dated April 8, 1971, which modified earlier Orders of this Court dated March 5, 1971 and April 2, 1971, Petitioner was appointed Fiscal Agent of Defendants Capital Counsellors, Inc. ("Counsellors"), and Capital Advisors, Inc. ("Advisors"); and by further Order dated June 11, 1971, Petitioner was appointed Receiver of all assets and property of said defendants and of all assets or property which they carried or maintained for the account of others.

2. By further Orders of this Court dated September 21, 1972 and December 21, 1972, among other things:

(a) the Fiscal Agent's account for the entire period of the fiscal agency, and the Receiver's Account from June 11, 1971, the date of his appointment, through December 31, 1971, was approved,

(b) Participants in Counsellors' Government Bond Plan and Put & Call Plan, and certain other persons reflected on the books of Counsellors and/or Advisors as creditors of either or both, were, as hereinafter more particularly set forth, "deemed" without the necessity of action on their part, to have filed claims against Counsellors and Advisors,

(c) the form in which such participants' claims other than "deemed" claims (hereinafter called "Claims for Excess") and any other claims must be filed was provided, and October 30, 1972 was established as the "bar date" beyond which no further claims could be filed without leave of the Court,

(d) the Receiver was required to, and did, file a report, following the bar date, setting forth the nature and amount of the claims against Counsellors and Advisors,

(e) interim allowances were made to the Receiver and his attorney, and

(f) approximately \$3,000,000 of Counsellors' total assets of about \$5,000,000, was, as hereinafter more particularly related, distributed to Government Bond Plan participants with plus account balances, as interim distributions on account, such distributions being intended to constitute the minimum respective amounts to which these participants would be entitled irrespective of how the Court eventually resolved the question of what the relative priorities should be between the various classes of claimants.

THE RELIEF SOUGHT ON THIS PETITION

3. This Petition seeks a Court hearing upon the following items:

(a) Approval of the Receiver's accounts from January 1, 1972 to March 31, 1973 inclusive.

(b) The nature of what further proofs, if any, are required to be submitted by "deemed" claimants against Counsellors and/or Advisors as a condition of allowance of their respective claims and the time and manner in which such proofs should be submitted.

(c) The disposition of the aforesaid "Claims for Excess" heretofore filed, all of which, as hereinafter set forth, the Receiver recommends be deemed timely filed but be disallowed on their merits, and the disposition of such other or further claims, if any, as may have been duly and timely submitted to the Receiver, and either approved or rejected by him.

(d) The relative priorities to be accorded to all allowed claims in the distribution of the assets remaining in Receiver's hands, including, without limiting the generality of the foregoing, the determination of whether, to what extent and in what manner allowed claims should be

- (i) Counsellors,
- (ii) Advisors,
- (iii) both corporations;

and whether and to what extent any assets of either corporation should be deemed impressed with a trust in favor of any claimant or class of claimants.

(e) Approval of further interim allowances to the Receiver, his counsel and Haskins & Sells, the accountants for the receivership estate.

(f) The removal of certain restraints, hereinafter more particularly described, relating to the disposition of certain funds in the hands of the Receiver, to the extent, if any, that such restraints are still in effect.

THE ASSETS REMAINING TO BE DISTRIBUTED

4. As hereinafter set forth in greater detail, the assets of Counsellors which, as of March 31, 1973, were available for distribution or had been distributed consist of cash aggregating about \$5,000,000 (of which about \$3,000,000 has heretofore been distributed on account to "GBP Account Balance Claimants", as hereinafter defined); and non-cash assets valued, as of March 31, 1973, at \$220,015, consisting chiefly of stock of Advisors, which is Counsellors' wholly owned subsidiary. Advisors has been almost fully liquidated and its present net worth is approximately \$200,000*.

NATURE OF THE "DEEMED" CLAIMS

5. Paragraph 6 of this Court's Order of September 21, 1972 provided, among other things, that participants in Counsellors' Government Bond Plan and Put and Call Plan were to be deemed, without further action on their part, to have filed claims against Counsellors as follows:**

"(a) Persons who had a Haskins & Sells zero account balance will be deemed to have filed a claim in the amount of such person's net investment,

(b) Persons who had a Haskins & Sells minus account balance will be deemed to have filed a claim in the amount of such person's plus net investment reflected in Schedule A or Schedule B of the aforesaid Receiver's August 18, 1972 affidavit less the amount of such minus account balance,

(c) Persons who had a Haskins & Sells plus account balance will be deemed to have filed a claim for the amount of such plus account balance and, if Schedule A or Schedule B, as the case may be, shall reflect that any such person has a plus net investment, a further claim for the amount, if any, by which such plus net investment exceeds the amount of such plus account balance of the Receiver's August 18, 1972 affidavit."

The purpose of this provision was to render it unnecessary for participants in these Plans to go to the trouble and expense of engaging counsel to prepare and submit formal proof of either their respective net investment in the Plans, or their Haskins & Sells account balances. These respective amounts had already been reported to the Receiver and to the Court by Haskins & Sells, which firm had, pursuant to the Court's direction, conducted an audit of Counsellors' books for the purpose of determining the respective interests of participants in the Plans.

6. Paragraph 7 of the said order of September 31, 1972, provided in effect that certain claims*** listed in Schedule C of the Receiver's August 18, 1972 affidavit as having been approved by the Receiver, in whole or in part, were to be considered "deemed claims" to the extent of such approval.

7. As provided in subparagraph 14(d) of the September 21, 1972 order, all "deemed claims" were to be deemed asserted against Counsellors and Advisors, jointly and severally.

8. Subparagraphs 14(a) through 14(c) inclusive of the September 21, 1972 order provide in effect that the Court, for good cause shown by any interested party, may require any "deemed" or other claimant to furnish evidence in support of his claim; that the validity of any deemed claim may be challenged by the Receiver, the SEC or any other claimant, upon such notice and time as the Court may direct, and that the relative priority of any deemed claim shall likewise be determined upon such notice and at such time, as the Court may direct.

* Subject to tax claims, further administration expenses and to claims under the Federal Securities Laws by participants in Counsellors' "Government Bond Plan" and "Put and Call Plan", to receive the amount of their respective investments to the extent such claims are allowed and are not satisfied out of the assets of Counsellors. As hereinafter indicated, assuming such claims are allowed (and Receiver recommends they be allowed) the assets of Counsellors will be insufficient to satisfy them, and the deficiency, consequently assertable against the assets of Advisors will far exceed Advisors' net worth. (See Par. 31 footnote, *infra*).

** All references made in said Order to Haskins & Sells account balances meant balances as of December 31, 1971, as heretofore determined by Haskins & Sells.

*** Mostly claims of trade creditors of Advisors.

DEFINITIONS OF VARIOUS TYPES OF CLAIMS AND CLAIMANTS

9. The persons referred to in the first clause of sub-paragraph 6(c) of the Court's aforesaid order of September 21, 1972, i.e., "persons who had a Haskins & Sells Plus Account Balance", are hereinafter collectively referred to as "Account Balance Claimants", and their deemed claims for the amount of such plus account balances are referred to as "Account Balance Claims".

10. Account Balance Claims under the Government Bond Plan are hereinafter called "GBP Account Balance Claims" and those under the Put and Call Plan are called "Put and Call Account Balance Claims". All other deemed claims pursuant to sub-paragraph 6(c), and all deemed claims under sub-paragraphs 6(a) and 6(b) of the said order are hereinafter collectively called "Claims for Excess of Net Investment Over Account Balance", or, for the sake of brevity, "Claims for Investment Overage". All deemed claims pursuant to paragraph 7 of the said order, and all such other or further claims, except administration and tax claims, as the Court may allow, are hereinafter sometimes collectively called "General Claims", and the claimants entitled thereto are hereinafter sometimes called "General Claimants".

11. As of the critical date, a number of "puts" purchased by various Put & Call Plan participants were still open and unexercised. Since some of these later became exercisable at a profit, the Fiscal Agent, at the request of the interested participants, exercised them. The names of these participants and their respective profits, which totaled \$1,254.82 in all, are set forth in Exhibit 1 hereof. These participants are called "Put Profit Takers" and their claims for the aforesaid profits "Put Profit Claims".

12. As of the critical date, certain persons had deposited monies with Counsellors intended by both the depositors and by Counsellors for investment in the next Government Bond Plan syndicate to be formed. The advent of Court administration of Counsellors' affairs, and restraint of its further active operations, prevented any further syndications and the money remained on deposit. These investments aggregated \$30,369.55. An itemized list of the investors (hereinafter called "Abortive GBP Investors") and their claims (hereinafter called "Abortive GBP Claims"), is attached as Exhibit 2 hereof.

RECOMMENDATIONS AS TO ALLOWANCE OF CLAIMS

13. For reasons hereinafter discussed in greater detail, Receiver, having consulted with and upon the advice of his counsel, recommends as follows:

A. That all GBP Account Balance Claims, PC Account Balance Claims and Claims for Investment Overage be allowed (subject to the recommended priorities hereinafter set forth) as claims against Counsellors, without the necessity of further proof thereof, and, to the extent hereinafter set forth in paragraphs 19 and 20 hereof, as claims against Advisors.

B. That all other deemed claims and all claims, other than deemed claims, as Receiver has heretofore approved (such deemed or Receiver-approved claims being set forth in Exhibit 3 hereof) be allowed (subject to the recommended priorities hereinafter set forth) as against either Advisors only or Counsellors only as indicated in such Exhibit.

C. That all "claims for excess" made pursuant to paragraph 8 of the aforesaid order of September 21, 1972, which claims are listed in Exhibit 4 hereof, be deemed timely filed, but be summarily disallowed in their entirety, on their merits.

D. That all claims (other than the "Claims for excess" referred to in "C" above) heretofore rejected by the Receiver (which claims are set forth in Exhibit 5 hereof) be disallowed subject to the submission of such further proofs, if any, and such hearing, if any, as the Court may deem appropriate.

E. That all Put Profit Claims be allowed in the respective amounts set forth in Exhibit 1 hereof and that all Abortive GBP Claims be allowed in the respective amounts set forth in Exhibit 2 hereof.

ANALYSIS OF REASONS FOR RECEIVER'S RECOMMENDATIONS AS TO ALLOWANCES OF CERTAIN CLAIMS

14. The amounts of the respective Account Balance Claims and claims for Investment Overage of the various Account Balance Claimants are based upon the initial Haskins & Sells report to the Court and on computations made by the Receiver's staff, both of which, in turn, were based upon Counsellors' books and records. Consequently, it would not, in Receiver's opinion, serve any useful purpose to require these claimants to submit proof as to the amounts of their claims. Furthermore, for reasons which will be set forth in Receiver's Counsel's Memorandum of Law to be filed herein, Receiver has concluded that no proof of reliance upon particular misrepresentations, or upon any omissions to state material facts, should be required of Government Bond Plan or Put & Call Plan participants, either in respect to their Account Balance Claims or their Claims for Investment Overage.

15. The Receiver's report herein dated November 10, 1972 at page 4 thereof, lists a number of Claims for "Excess" filed by GBP and PC Plan participants pursuant to Paragraph 8 of this

Court's order of September 21, 1972. Although a number of these claims were filed later than the bar date, the time lapse was not great and Receiver accordingly recommends that such claims should not be barred for lateness, but should be considered on their merits. However, Receiver recommends that they be denied on their merits in that all of them, other than the claims of Harry M. Tonkin and Hudson Rosenblatt, appear to be embraced by the "deemed" claims of the respective participants, or, in other words, claims as to which, pursuant to this Court's order of September 21, 1972, no proof need be submitted by the claimant absent a specific court order to the contrary.

16. The claim of Hudson Rosenblatt is in the sum of \$20,276.74. Of this amount, \$6,000 is embraced in Mr. Rosenblatt's "deemed" claim for Investment Overage. The balance thereof appears to be unjustified on its face, and the Receiver has rejected it. The claim of Harry M. Tonkin is in the nature of a request for adjustment of an obvious arithmetical error in the original computation of his account balance. The error has been rectified on the books of Counsellors so that no further consideration of Mr. Tonkin's claim is necessary, it now being considered as a "deemed" claim.

RECOMMENDATION AS TO PRIORITY OF CLAIMS

17. For reasons likewise hereinafter more fully discussed, Receiver, having consulted with and upon the advice of his counsel, recommends that in distributing Counsellor's cash, first priority be accorded to Counsellors' unpaid administration expenses, including, among other things, Advisor's claim against Counsellors for reimbursement for sums heretofore advanced by Advisors on Counsellors' behalf for administration expenses, tax claims and Court-approved reserves for such further administration expense and taxes as may be reasonably anticipated; and that the remaining cash balance, together with the non-cash assets of Counsellors, be divided into two separate and distinct funds, one, hereinafter called the "General Fund", consisting of cash in the sum of \$89,025, Counsellors' tax refunds receivable, which were valued at \$20,496.14 as of March 31, 1973, and the stock of Advisors; and the other, hereinafter called the "GBP Fund", consisting of the rest of Counsellors' cash. Receiver further recommends that the GBP Fund, be utilized, in its entirety, to satisfy GBP Account Balance Claims, *pro-rata*.

18. Receiver further recommends that, to the extent that the GBP Fund is insufficient to satisfy the GBP Account Balance Claims in full, claims for such deficiency (herein referred to as "GBP Account Balance Deficiency Claims") shall, together with the allowed PC Account Balance Claims, Claims for Investment Overage, and General Claims against Counsellors be satisfied, *pro-rata* and *pro tanto*, out of the assets, other than the stock of Advisors,* constituting the General Fund.

19. Receiver further recommends that to the extent that the allowed claims referred to in paragraph 18 above are not satisfied in full out of the GBP Fund and the assets, other than the stock of Advisors, constituting the General Fund, such claims shall be satisfied out of the assets of Advisors in the manner provided in the following paragraph 20 hereof.

20. Receiver further recommends that the assets of Advisors (which, with insignificant exceptions, consist solely of cash or its equivalent aggregating approximately \$247,000) be applied first to pay Advisor's unpaid administration expenses and such tax claims as are allowed, and to establish Court-approved reserves for such further administration expenses and taxes as may be reasonably anticipated, and that the remaining balance be distributed in payment, *pro-rata* and *pro tanto*, of all allowed claims against Advisors (including GBP Account Balance Deficiency Claims, PC Account Balance Claims, Claims for Investment Overage, General Claims against Counsellors, and General Claims against Advisors).

22. Receiver further recommends that Put Profit Claims be paid in full to the respective Put Profit Takers, as a first charge against the GBP Fund.

ANALYSIS OF REASONS FOR THE RECEIVER'S RECOMMENDATIONS CONCERNING PRIORITY OF CLAIMS

23. Attached hereto as Exhibit G hereof, and hereinafter sometimes referred to as the "Haskins & Sells March 31, 1973 report" are copies of statements of realization and liquidation in respect to Counsellors and Advisors, for the period December 31, 1971 through March 31, 1973, and a statement of Counsellors' cash receipts and disbursements during the same period, as prepared by Haskins & Sells. That firm, as the Court-appointed accountants for Counsellors and Advisors, had made its first report as to their financial condition as of the close of fiscal year ended March 31, 1971.** The Haskins & Sells March 31, 1973 report, as supplied by the within petition and report, is hereby adopted as the Receiver's account for the period covered thereby.

* If the Receiver's recommendations are followed the allowed claims against Advisors will far exceed the value of Advisors' assets, and accordingly Advisors' stock will be worthless. See Court's Order of September 21, 1972, *supra*, and paragraph 31 *infra*.

** Copies of the Haskins & Sells financial reports relating to Counsellors and Advisors, as of March 31, 1971, June 11, 1971 and December 31, 1971 are attached to this Court's Order to Show Cause herein, dated May 8, 1972, copies of which were served on the "known claimants" referred to therein. The "known claimants" are hereby requested to furnish further copies to any claimant upon written request.

24. The Receiver has caused an analysis to be made by his staff, with the cooperation of Haskins & Sells, in order to determine what portion, if any, of the assets of Counsellors, as of March 25, 1971, which was the date (hereinafter sometimes called the "critical date") of inception of Court jurisdiction over the assets and affairs of Counsellors and Advisors, should be considered as a separate trust fund (the "GBP Fund") for the benefit of any particular class of claimants as distinct from the portion of Counsellors' assets which should be considered as available to all of its creditors (the "General Fund").

25. Such analysis revealed that, as of the critical date Counsellors had three bank accounts, one entitled "Government Securities Division Account" maintained at Chase Manhattan Bank, another entitled "Regular Account" maintained at the same bank, and a third, bearing no particular title, maintained at Chemical Bank New York Trust Company. The last two accounts mentioned had balances of \$46,695 (Chase) and \$21,553 (Chemical) as of that date.

26. Counsellors' books of account disclosed that commencing at least as early as January 1, 1970, about fifteen months prior to the critical date, the cash balances maintained in these two accounts were derived largely, if not entirely, from the proceeds of subscriptions to the stock of Counsellors, and that neither of such accounts was treated as a repository of funds belonging to its customers. Hence the Receiver has concluded that the aggregate amount of the balance of these two accounts as of the critical date (\$68,548) should be deemed a general asset of Counsellors as of that date, and that, since the amount of said balances has continued to form part of the administration assets in his hands, first as fiscal agent and later as Receiver, \$68,548 of Counsellors' cash on hand as of March 31, 1973, should be deemed to be a General Fund asset, attributable to the afore-said bank accounts.

27. It further appears that as of the critical date Counsellors had the following non-cash assets, and that none of such assets was ever treated as the property of its customers:

		Critical Value
Receivable from GBP customers	\$ 3,737	
Receivable from Put & Call customers	15,865	
	<u>\$19,602</u>	
Plus corrective adjustments made by Haskins & Sells	2,136	
Total receivables from customers		\$21,738
Refundable income and franchise taxes	\$26,761	
Plus corrective adjustment made by Haskins & Sells	<u>1,235</u>	
Total refundable taxes		\$27,996
Investment in shares of Atlantic Fund		4,040
Investment in shares of Advisors		<u>—0—</u>

28. From the critical date through March 31, 1973 a total of \$8,899 of the receivables from customers was collected by the Receiver. The balance of \$12,839 has been written off as uncollectible since the expense of proceeding against the many participants involved would far exceed the foreseeable recovery. Receiver accordingly recommends that \$8,899 of Counsellors' cash on hand as of March 31, 1973, be deemed to be a General Fund asset, attributable to receivables from customers.

29. The shares of Atlantic Fund were sold by the Receiver during the course of administration and yielded net proceeds of \$4,078, slightly more than the critical date value of these shares. Since the said sum of \$4,078 has continued to form part of the assets in the Receiver's hands, Receiver recommends that \$4,078 of Counsellors' cash on hand as of March 31, 1973, be deemed to be a General Fund asset attributable to shares of the Atlantic Fund.

30. \$7,500 of Counsellors' tax refund claims accrued as of the critical date have been collected and the balance of \$20,496 remains unpaid, although Receiver is advised that eventual collection thereof is likely. Since both the amount collected and the amount unpaid have continued to form part of the receivership assets Receiver recommends that, as of March 31, 1973, \$7,500 of Counsellors' cash, attributable to a tax refund heretofore made, and a claim for a further tax refund of \$20,496, be deemed to be General Fund assets.

31. Hence, to recapitulate, Receiver recommends that as of March 31, 1973 and thereafter, the General Fund of Counsellors be deemed to consist of the following assets:

* See footnote to paragraph 31, *infra*.

Cash

Attributable to Counsellors' Regular Account at Chase Bank and its account at Chemical Bank	\$ 63,548
Attributable to collections of receivables from customers	8,899
Attributable to Atlantic Fund shares	4,078
Attributable to tax refunds collected	7,500

Total Cash **\$ 89,025**

Non-Cash

Attributable to claims for tax refunds	\$ 20,496
Attributable to shares of Advisors	199,519*

Total Non-Cash **\$220,015**

32. Further analysis disclosed that, as of the critical date, Counsellors was indebted to some fourteen banks, located in various parts of the country, in the aggregate principal amount of approximately \$65,000,000, for loans made on behalf of the various Government Bond Plan syndicates which it had organized for the purpose of acquiring and holding short term U.S. Treasury Bills and eventually "switching" these into long-term government obligations. In each instance, the Treasury Bills were pledged to the respective bank as security for the respective loan. Haskins & Sells has advised that, as of the critical date, there was "cash in transit" to Counsellors from these banks aggregating \$3,312,107, representing the equity of the GBP participants in the net proceeds of the Treasury Bills, after payment of the loans secured thereby.

33. The aforesaid cash in transit was received by Counsellors during the month of April 1971, commencing after the entry of the Court Order of April 2, 1971 directing the liquidation of the loans and placing the administration of Counsellors under the jurisdiction of a Court-appointed fiscal agent.** The banks and the fiscal agent were, by the terms of the said Order, authorized and empowered to treat the net proceeds of the liquidation of the loans as being "for the benefit of public investors in [Counsellors'] Bond Plan." Receiver, for reasons which will be set forth in Receiver's Counsel's memorandum of law, has concluded that the amount of the aforesaid "cash in transit" (\$3,312,107.71) should be deemed impressed with a trust in favor of GBP Account Balance Claimants, and, accordingly, part of the GBP Fund, as should the aggregate net equity of \$647,861 (See Paragraph 39, *infra*), as of the critical date, of the GBP syndicates liquidated thereafter.

34. As aforesaid, Counsellors' "Government Securities Division" bank account had a balance of \$459,748, as of the critical date. Receiver caused an extensive analysis of Counsellors' records to be made by his staff, in consultation with Haskins & Sells, to determine whether this balance, like the "cash in transit", should be considered held in trust for the benefit of GBP Account Claimants, and accordingly, part of the GBP Fund. To this end, an investigation was made to determine, insofar as possible and practicable, the sources of the balance in this account and the manner in which the account was administered prior to the critical date.

35. It appeared from such investigation that, other than for a payment of \$100,000 made out of the "Regular Account" into the "Government Securities Division Account" early in 1970, which was apparently intended to be in the nature of an investment of "stockholders' money" in the Government Bond Plan, the sources of the balance in the Government Securities Division Account were (with exceptions that the Receiver, on advice of his counsel, does not consider significant) confined to payments by subscribers to the Government Bond Plan constituting their respective investments in that Plan, the proceeds of the bank loans above referred to, and the proceeds of the Treasury Bills purchased with the proceeds of such loans, as such bills matured. The Receiver is further advised by his counsel, and so recommends, that although the issue is not free from doubt, the aforesaid balance in the Government Securities Division Account as of the critical date should be considered as subject to a trust in favor of GBP Account Balance Claimants, and hence part of the GBP Fund. It appears that the \$100,000 "investment of stockholders' money" from the Regular Account was more than fully repaid to the Regular Account by the Government Securities Division Account in the year in which the investment was made. Receiver's counsel advises that the fact that \$100,000 of stockholders' money was, until such repayment, intermingled, in whole or in part, with the moneys derived from subscriptions of GBP Claimants, and the further fact that in some instances moneys in this account may have been used for non-trust purposes, should not tip the scales against a finding that the account balance in question constitutes in trust for the benefit of

* Due to Receiver's sale of Advisor's assets at a favorable price in November of 1972, its stock, which had been considered valueless as of the critical date, had a book value (comprised almost entirely of cash) of \$199,519 as of March 31, 1973 as per Haskins & Sells statement as of that date. Note, however, that the said book value of Advisors' shares does not take into account the claims against Advisors, totalling many times that amount, made by participants in Counsellors' GBP Plan and Put & Call Plan, to the extent such claims may be allowed by the Court and are not satisfied out of Counsellors' assets.

GBP Account Balance Claimants, and Receiver is in accord with this view. No similar account segregation or fund earmarking was made with monies received or disbursed for PC Account Balance claimants, whose transactions were customarily handled through Counsellors' "Regular Account", in which the funds of Counsellors itself were continuously and consistently inextricably intermingled with proceeds received from Put and Call participants, and, on occasion, from Put and Call houses with which Counsellors' Put and Call transactions were consummated. Consequently Receiver finds no similar justification to impress any part of Counsellors' assets with a trust in favor of participants in the Put & Call Plan.

36. Two other relatively large items, both constituting assets on hand as of the critical date, should also, in the opinion of Receiver and his counsel, be deemed to be part of the GBP Fund as of that date. The first is a non-interest bearing Certificate of Deposit in the sum of \$180,000, which was held by one of the lending banks as additional collateral for a GBP syndicate loan. This certificate was redeemed by the issuing bank on or about April 20, 1970 and the proceeds applied toward payment of the loan. The other item is \$400,000 in commercial paper issued by Singer Credit Company, which became due and was paid on April 7, 1971. Counsellors' books of account reflect that this commercial paper, although not attributable to any particular loan syndicate, was very short-term paper which had been purchased with funds from the Government Securities Division Account at a time when the entire "stockholders' investment" of the Regular Account in the Government Securities Division Account had been repaid in full.

37. The reason for permitting the Put Profit Takers to be paid in full, out of the GBP Fund, is that their profit was in its entirety earned during the course of the administration of the Receivership Estate.

38. The reason for putting the GBP Abortive Claimants on a parity with GBP Account Balance Claimants is that their investments were deposited, when received, into the Government Securities Division Account and it may be fairly presumed that only the advent of Court administration of Counsellors' affairs and restraint of its further operations prevented these investments from becoming a part of the assets of a Government Bond Plan syndicate.

39. Recapitulating the breakdown of Counsellors' assets between the GBP Fund and the General Fund as of the critical date, it is as follows:

GBP Fund

Cash in transit	\$3,312,107
Cash on hand in Government Securities Division Account	459,748
Certificate of Deposit	180,000
Commercial paper	99,930*
Net Equity in those of GBP syndicates as were liquidated after the critical date	647,861**
Total GBP Fund	\$4,699,716

General Fund

Cash	\$89,025
Claims for tax refunds	20,496
Total General Fund	109,521***
Total of GBP Fund and General Fund	\$4,809,237

40. As of March 31, 1973 Counsellors' cash on hand (including \$4,052 in accrued interest on time deposits which have since matured) aggregated \$2,043,884.**** It is obvious that in any recommendation as to the manner of distributing Counsellors' March 31, 1973 cash and non-cash assets, there must be taken into account not only the aforesaid sum of \$2,043,884, but also the further cash sum of \$3,033,584 theretofore distributed on account, to GBP Account Balance Claimants. (See statement of cash receipts and disbursements forming part of Haskins & Sells 3/31/73 report.) The resulting total is \$5,077,468.

* Valued as of the critical date.

** See Haskins & Sells 3/31/71 report. Amount shown is the excess of the cost of Treasury Bills on hand (\$14,833,651) over the loans payable (\$13,866,057) and the accrued interest on such loans (\$319,733).

*** Exclusive of Advisors' stock, which was valueless as of the critical date.

**** Inclusive of \$4,532 in accrued interest on time deposits. Since these time deposits have matured since 3/31/73, the accrued interest will be treated as cash for purposes of this petition.

41. To this should be added the claims for tax refunds valued at \$20,496 as of March 31, 1973 (see paragraph 39 *supra*)* and there must be deducted the sum of \$88,160 representing administration expenses heretofore paid by and reimbursable to Capital Advisors Inc., and the further sum of \$94,898 in other administration expenses accrued as of March 31, 1973 (See Haskins & Sells report of March 31, 1973).

42. Thus, before making allowance for further (i.e., post 3/31/73) administration expenses, including further estimated income tax liability, the net assets of Counsellors available for distribution to all pre-administration claimants come to approximately \$4,915,000. Receiver estimates that the aggregate amount of the further administration expenses of Counsellors (including further income tax liability)** will not exceed \$120,000. On this assumption, it is safe to assume that at least \$4,795,000 will be available for distribution, out of Counsellors' assets, to all claimants against Counsellors, and that this amount is represented almost entirely by cash or assets which are the substantial equivalent of cash. In addition, as indicated hereinabove, almost \$200,000 more has become available to Counsellors' GBP and PC participants out of the assets of Advisors, which, as of the critical date, had had only relatively nominal assets. Thus the total assets now available to Counsellors' creditors come to about \$4,995,000. The aggregate amount available to Counsellors' creditors as of the critical date was about \$4,809,000 (See paragraph 39 *supra*). It appears therefore, that the total assets which are now available to Counsellors' creditors, after payment of all of Counsellors' expenses from the critical date until the termination of the Receivership, are at least \$186,000 greater than the assets which were available to Counsellors' creditors as of the critical date.

43. Receiver, on the advice of his counsel, has concluded that all income of Counsellors heretofore and hereafter received and accrued, since the critical date, from whatever source derived, should be credited to the GBP Fund; and that all the administration expenses of the Fiscal Agent and the Receiver should be charged against that Fund. The reason for this recommendation is that the amount of bookkeeping involved in making an exact allocation would be completely disproportionate in view of the large total (about \$4,430,000, as set forth in Par. 46, *infra*) of the claims against the General Fund and its relatively small size (only about \$109,000 if we assume, as Receiver recommends, that the Advisors' stock has no present value). Indeed, any proportionate allocation of income and expenses as between the General Fund and the GBP Fund would result in only miniscule differences to those entitled to share in the respective Funds.

44. If the Court approves the foregoing recommendations of the Receiver, the cash available for distribution to GBP Account Balance Claimants out of Counsellors' assets, as of March 31, 1973, was \$2,043,884, less the following sums, aggregating approximately \$392,083, leaving a cash balance of about \$1,651,801:***

- (a) \$89,025 attributable to the General Fund (See paragraph 31, *supra*).
- (b) \$88,160 payable by Counsellors to Advisors to reimburse the latter for administrative expenses heretofore paid by it for Counsellors.
- (c) \$94,898 constituting a reserve for claimed administration expenses through March 31, 1973 for legal and accounting fees and Receiver's fees, all subject to Court approval (See Haskins & Sells 3/31/73 report);
- (d) Reserve for further income tax claims, estimated at \$20,000.
- (e) Reserve for administration expenses incurred and to be incurred from March 31, 1973 to termination of Receivership, estimated at \$100,000.

45. Based on these assumptions and reserves, the balance of \$1,651,801 will be available for distribution to GBP Account Balance Claimants out of Counsellors' cash. Since \$3,033,584 has already been distributed to those claimants on account a total of \$4,685,385 will thus be paid to them. This amount, which is the estimated net balance of the GBP Fund, represents approximately 93% of the total GBP Account Balance Claims (which, as adjusted to March 31, 1973, but before deducting the aforesaid payments on account, total \$5,061,882).****

* For purposes hereof the Advisors' stock must be treated as worthless at 3/31/73 as well as at the critical date (See footnote to paragraph 31, *supra*).

** As reflected in Haskins & Sells 3/31/73 report, the Internal Revenue Service audit deficiencies for the tax years 1968 and 1969, aggregating approximately \$371,000 have been tentatively settled for \$25,144, plus interest, and, in the opinion of Haskins & Sells and of Receiver's counsel, neither Counsellors nor Advisors will be held to have any significant liability under the further tentative IRS income tax assessments aggregating \$350,000 for the tax years 1970 and 1971.

*** For convenience, and in light of their relatively insignificant total (\$1,254.82); the Put Profit Claims, which Receiver recommends be paid in full out of the GBP Fund (See Paragraphs 11 and 22) have not been taken into account in the above computation.

**** As reflected in Haskins & Sells 3/31/73 report.

***** This estimate and the corresponding estimate for Advisors in Paragraph 48 hereof assume that no protracted litigation or lengthy Court hearings will ensue herein.

46. Since, as aforesaid, the estimated net balance of the GBP Fund will be \$4,685,385 its utilization to pay the GBP Account Balance Claims *pro tanto* will reduce the unpaid balance of those claims to \$376,497. This unpaid balance of GBP Account Balance Deficiency Claims should first be satisfied out of the assets, other than the Advisors' stock, comprising the General Fund, as should the PC Account Balance Claims, the Claims for Investment Overage, and the General Claims against Counsellors. (See Paragraph 18, *supra*). Thus, the estimated total amount of the claims assertable against the General Fund would be as follows:

GBP Account Balance Claims, to the extent not satisfied by the GBP Fund (GBP Account Balance Deficiencies)	\$ 376,497
Claims for Investment Overage by GBP participants computed as follows:	
GBP Net Investments	\$7,393,888*
Less GBP Account Balance Claims	\$5,061,882**
GBP Claims for Investment Overage	2,332,006***
PC Account Balance Claims	79,341**
PC Claims for Investment Overage, as follows:	
PC Net Investments	1,672,839*
Less PC Account Balance Claims as above	79,341
PC Claims for Investment Overage	1,593,498***
Estimated General Claims against Capital Counsellors, Inc.	50,000
Estimated total claims assertable against General Fund	\$4,431,342

47. The aggregate value of the General Fund, including both cash and non-cash assets, but attributing no value to the Advisors' stock for reasons hereinabove stated, is \$109,521. (See Par. 31, *supra*). Thus, it will be seen that the above claimants against the net General Fund, who would be entitled to share in the General Fund on a *pro-rata* basis (See Par. 18, *supra*), would receive, on the basis recommended by the Receiver, approximately 2% of their respective claims against the General Fund.

48. Proceeding to the manner in which the assets of Advisors should be distributed, it will be seen from Haskins & Sells March 31, 1973 report concerning Advisors that, as aforesaid, almost all of its assets are cash, or, in respect to the asset entitled "Accounts Receivable from Capital Counsellors, Inc." the equivalent of cash, and that such assets total approximately \$247,000. As indicated in the report, Advisors' liability for administration expenses as of March 31, 1973 (that is, liabilities incurred subsequent to March 25, 1971), total \$26,557. Receiver estimates that Advisors' further administration expenses, from April 1, 1973 through the termination of Receivership will not exceed \$25,000 and recommends that a reserve therefor be set up in that amount. Thus, deducting from Advisors' assets of \$247,000, its accrued administration expenses as of March 31, 1973 and the aforesaid \$25,000 reserve for administration expenses, the resulting net assets of Advisors available for distribution to its creditors total approximately \$195,000. The claims assertable against these net assets would be approximately as follows:

Unsatisfied balance of GBP Account Balance Claims— \$376,000 less 2% (about \$7,500) or about	\$ 368,000
Unsatisfied balance of GBF Claims for Investment Overage— \$2,332,000 less 2% (about \$47,000) or about	2,282,000
Unsatisfied balance of PC Account Balance Claims— \$79,000 less 2% (about \$1,600) or about	78,000
PC Net Investment Overage— \$1,593,000 less 2% (about \$32,000) or about	1,559,000
Estimated General Claims against Capital Advisors, Inc.	21,000
Estimated total claims assertable against net assets of Advisors	\$4,308,000

Thus, the above claimants against the net assets of Advisors (such assets, as aforesaid, total about \$195,000), who would be entitled to share in such assets on a *pro rata* basis (See Pars. 19-20, *supra*) would receive, on the basis recommended by the Receiver, approximately 4.5% of their respective claims against such assets.

* As computed by Receiver's staff, adjusted to date.

** As per Haskins & Sells 3 31 73 report.

*** These amounts are before deduction of minus Haskins & Sells account balances aggregating \$4,453 in the case of GBP Claims for Investment Overage and \$7,587 in the case of PC Claims for Investment Overage. Upon reconsideration Receiver believes that no such deductions should be made, and so recommends. In any event the net effect of making such deductions would be minimal.

49. Accordingly, the Receiver estimates that the GBP Account Balance Claimants, on the basis recommended by the Receiver, would therefore receive total cash distributions of at least 96% of their claims, computed as follows:

To be received on claims against the GBP Fund	\$4,685,385
To be received on claims against the General Fund for GBP Account Balance Deficiencies—	
2% of \$376,000 or about	7,500
To be received on claims against the General Fund for GBP Investment Overage—	
2% of \$2,332,000 or about	47,000
To be received on claims against the assets of Advisors computed as set forth below	119,000
GBP Investment Overage	\$2,332,006
Plus	
GBP Account Balance Deficiencies	376,497
	<hr/>
	\$2,708,503
Less:	
To be received from GBP Fund on account of Account Balance Deficiencies	7,500
To be received on claims against the General Fund for GBP Investment Overage	47,000
	<hr/>
	54,500
	<hr/>
	\$2,654,003
 \$2,654,003 x 4.5% = (approx.) \$119,000	
	<hr/>
	\$4,858,885

Since the aggregate GBP Account Balance Claims come to \$5,061,882 (See Par. 45, *supra*) the estimated aggregate cash to be received thereon (\$4,858,885) comes to about 96% thereof. This estimate is conservative in that it does not take into account the eventual collection of tax refunds payable or the income from the assets of the receivership from March 31, 1973 until final distribution. These items should increase the distributions to GBP Account Balance Claimants by at least another 1% of their respective claims.

50. It is further estimated that GBP Claimants for Investment Overage who have no GBP Account Balance claims, PC Account Balance Claimants and PC Claimants for Investment Overage would receive about 2% of their respective claims payable out of the General Fund, and, roughly, another 4% out of the net assets of Advisors; and that the General Claimants against Counsellors would receive about 2% of their claims and the General Claimants against Advisors about 4% of their claims, respectively.

REMOVAL OF CERTAIN RESTRAINTS

51. The aforesaid order of this Court dated April 2, 1971 provided that the defendants Weiss deposit certain funds into a special escrow account for the benefit of the customers of the corporate defendants, subject to further order of the Court. Following the initial deposit of \$7,000 into this account, no further deposits were made therein, since the practical effect of the Court's subsequent order of May 7, 1971 was to permit further Weiss contributions to be made directly to Counsellors and Advisors (which were then under Court supervision) rather than into the said escrow account. Your petitioner has nevertheless continued to maintain the aforesaid \$7,000 in the aforesaid account, and since the purpose of the special escrow no longer exists, prays that he be relieved and discharged therefrom and that he be permitted to close out the aforesaid special escrow bank account (which is maintained at Chase Manhattan Bank, 1 Chase Manhattan Plaza entitled "Sydney B. Wertheimer, as Receiver—Weiss Indemnity Account No. 910-1-363415") and deposit the proceeds into any other demand or time deposit account now or hereafter maintained by the Receiver for the benefit of Counsellors.

52. Reference is made to a certain contract dated September 15, 1971, between the Receiver and Netgo Ltd., a New York corporation, pursuant to which the Receiver sold to Netgo Ltd. a certain publication known as "Money and Credit Reports" and certain other assets. Paragraph 6 of the said contract (which contract was approved by this Court's Order herein dated and filed October 8, 1971) provides that the Receiver maintain, for the purpose of defraying certain claims for refund made by subscribers to Money & Credit Reports more particularly set forth therein, a certain fund entitled "Subscription Indemnity Fund". Paragraph 8(b) of the said contract provides that "Any balance of the Subscription Indemnity Fund not required to pay claims for refunds duly submitted to the Receiver on or before January 31, 1972 shall be retained by the Receiver for the use and benefit of the Receivership Estate, free from any claim of the Purchaser".

53. The aforesaid Court order of October 8, 1971 approving the said contract, provided in part as follows:

"It is further ordered, that neither the establishment of the Subscription Indemnity Fund referred to in the Contract nor the assumption by the purchaser of the obligation, more particularly provided in the Contract, to personally refund the unearned portions of subscription payments to cancelling subscribers to "Money and Credit Reports" shall, in the event that the Subscription Indemnity Fund shall prove insufficient for such purpose and the purchaser shall fail to personally make such payments, relieve Capital Advisors, Inc. from such obligations as it may have with respect thereto, and it is further

ORDERED that the entire proceeds, in excess of \$100,000, of any sale of Capital Advisors, Inc. shall be placed in escrow by the Receiver, who may invest such proceeds in short term time deposits or government securities. Such escrow fund shall be held subject to further order of this Court."

The proceeds of the aforesaid sale totalled \$150,000. Pursuant to the said contract and the said order, the Receiver established two special bank accounts both at Chase Manhattan Bank, 1 Chase Manhattan Plaza, one entitled "SYDNEY B. WERTHEIMER—As receiver for Capital Advisors, Inc. Money and Credit Subscription Indemnity Fund Time Deposits" (hereinafter called "Subscription Indemnity Account No. 1") in the original amount of \$100,000, and the other entitled "SYDNEY B. WERTHEIMER—As receiver for Capital Advisors, Inc. Money and Credit Supplementary Escrow Time Deposit" (hereinafter called "Subscription Indemnity Account No. 2") in the original amount of \$50,000.

54. All of the claims for refund made by subscribers to Money & Credit Reports, and duly and timely submitted to Receiver, were promptly paid in full out of the Subscription Indemnity Account No. 1, and substantial balances remain both in that account and in Subscription Indemnity Account No. 2. Neither Netgo, Ltd., nor Macro Publishing Corp. its wholly owned subsidiary, which succeeded to its rights and assumed its obligations under the contract nor any subscriber to Money & Credit Reports has made any other or further claim against Receiver within the time permitted therefor.

55. Accordingly, Receiver prays that he be released and discharged from any and all liability to Netgo Ltd. and Macro Publishing Corp., and to any successor of either of them, and from any and all liability to any subscriber to Money & Credit Reports, with respect to any such refund, and that he be permitted to close out the aforesaid Subscription Indemnity Accounts Nos. 1 and 2 (more specifically referred to in paragraph 53 hereof) and deposit the proceeds thereof in any other account now or hereafter maintained by him in the name of, or for the benefit of Advisors.

56. For bookkeeping convenience the funds in the "Weiss Indemnity Account" have despite their "escrow" designation been considered, in the periodic reports rendered by Haskins & Sells and the Receiver, as part of the assets of Counsellors, and likewise the funds in the Subscriptions Indemnity Accounts Nos. 1 and 2 have been considered in such reports as part of the assets of Advisors. Hence the lifting of any restraints with respect to the said three bank accounts will have no effect on the aforesaid computations with respect to the distribution of the available assets of either Company. During the early stages of the Receiver's tenure as fiscal agent for Counsellors and Advisors, certain other bank accounts of Counsellors and Advisors, including, but not limited to, the account of Counsellors at Chase Manhattan Bank bearing # 910-1-362698 and the account of Advisors at the same bank bearing # 910-1-362342 were, at various times designated or referred to as "escrow" accounts. However, it does not appear that any such designation or reference was intended to create any true escrow fund or relationship, and as in the case of the other bank accounts above referred to, neither Haskins & Sells nor the Receiver have treated these accounts as anything other than part of the assets of Counsellors or Advisors, as the case may be. These accounts no longer bear any "escrow" appellation or designation, and Receiver respectfully requests, that, as in the case of the three accounts referred to [in paragraph 56] hereinabove, he be discharged of any and all liability or responsibility with respect thereto, other than to dispose of the same, or the proceeds thereof, in accordance with his general duties and responsibilities as Receiver herein.

FEES OF THE RECEIVER, HIS ATTORNEY AND HASKINS & SELLS

57. As set forth in Haskins & Sells March 31, 1973 report, the following fees were reserved for on the companies' books in respect to claimed fees accrued and unpaid, as of March 31, 1973, for services performed prior to that date.*

* Haskins & Sells' report also indicates reserves of \$11,182 against Counsellors' assets, and an additional \$10,234 against Advisors' assets, to defray the claims of Conboy, Hewitt, O'Brien & Boardman for legal services rendered to the respective corporations in the unsuccessful defense of the receivership proceedings instituted by the Securities & Exchange Commission. The aforesaid attorneys' application is presently pending.

Chargeable To	Receiver	Receiver's Attorney	Haskins & Sells	Totals
Counsellors	\$38,250	\$ 9,450	\$ 4,733	\$52,433
Advisors	4,230	1,050	—	5,300
Totals	\$42,500	\$10,500	\$ 4,733	\$57,733

58. The respective additional fees claimed for services performed during the period from April 1, 1973 through August 1, 1973 (the date of the within petition) are as follows:

Chargeable To	Receiver	Receiver's Attorney	Haskins & Sells	Totals
Counsellors	\$30,000	\$12,500	\$10,611	\$53,111
Advisors	7,500	—	1,751	9,251
Totals	\$37,500	\$12,500	\$12,362	\$62,362

The aforesaid total fees of \$62,362 for services performed from April 1, 1972 through the date of the within petition are embraced within the total of \$125,000 which Receiver has recommended (See Paragraphs 44 & 48, *supra*) as reserves for the administrative expenses of both corporations incurred during the period from March 31, 1973 to the date of termination of the receivership.

59. The Receiver respectfully prays that the claims for fees set forth in Paragraphs 57 and 58 be approved. He has examined Haskins & Sells' billings for their charges, and considers them to be reasonable in light of the services rendered, and he and his attorney will submit affidavits of their own respective services to the Court on or before September 1, 1973. Copies of these affidavits will be made available for inspection at the receivership offices. Receiver's counsel advises that his memorandum of law will be filed on or before August 17, 1973, and copies thereof will be furnished to claimants or their attorneys on request after that date.

Dated: August 1, 1973

Respectfully submitted,

/s/ SYDNEY B. WERTHEIMER
SYDNEY B. WERTHEIMER, Receiver

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

SYDNEY B. WERTHEIMER, being duly sworn, deposes and says that deponent is the Receiver in the within action; that deponent has read the within Petition and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

/s/ SYDNEY B. WERTHEIMER
SYDNEY B. WERTHEIMER, Receiver

Sworn to before me this
7th day of August, 1973

/s/ ELI UNCYK
ELI UNCYK

Notary Public, State of New York
No. 31-4502581
Qualified in New York County
Commission expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- :

71 Civ. 1390

CAPITAL COUNSELLORS, INC., CAPITAL :

ADVISORS, INC., J. IRVING WEISS, :

ABRAHAM B. WEISS, :

RECEIVER'S
SUPPLEMENTAL
REPORT

Defendants. :

-----x
STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

SYDNEY B. WERTHEIMER, being duly sworn, deposes and says:

1. I am the Receiver for Capital Counsellors, Inc. ("Counsellors") and Capital Advisors, Inc. ("Advisors") in the above entitled proceeding, and make this Supplemental Report for the following purposes:

(a) to submit my accounts so as to include all transactions during the period from April 1, 1973 to December 31, 1973, inclusive, and thus enable the distribution approved by the Court's opinion of January 8, 1974 to take into account the net income of the receivership during that period;

(b) to set forth, in detail, the basis for the calculations of the aggregate amount of cash to be distributed at this time, the necessary cash reserves which must be maintained and the residual non-cash assets which remain to be collected; and

(c) to set forth the amount distributable on

account of all deemed claims (other than such trade claims, or portions thereof, as have been rejected by the Receiver), and on any claims other than deemed claims, if any, in accordance with the Receiver's recommendations approved by the Court's aforesaid opinion, and the basis for the calculation of such proposed distributions; all in support of the attached detailed order submitted to the Court for settlement in accordance with that opinion.

(d) to set forth in greater detail the reasons for Receiver's rejection of the Claims for Excess.

2. The Haskins & Sells 12/31/73 Report - Amended List of Claims.

Attached hereto as Exhibit 1 of this Supplemental Report, made part hereof, and hereinafter referred to as the "Haskins & Sells 12/31/73 Report", are copies of Statements of Realization and Liquidation in respect to both Counsellors and Advisors for the period from April 1, 1973 to December 31, 1973, inclusive, and of a supplementary letter from Haskins & Sells dated March 19, 1974. The Haskins & Sells 12/31/73 Report, as amplified by the within Supplemental Report, is hereby adopted as the Receiver's account of the transactions of the receivership for the period covered thereby.

At pp. 10-11 of the Haskins & Sells 12/31/73 Report are schedules of all timely asserted claims against Counsellors, and against Advisors, outstanding as of 12/31/73, other than GBP Account Balance Claims, PC Account Balance Claims and Claims for Investment Overage. This schedule is broken down into pre-administration claims (i.e., those asserted to have arisen prior to 3/26/71) and those asserted to have arisen on and after that date. As to each class of claim, the schedule indicates

(a) whether the claim was asserted against Counsellors, Advisors, or both;

(b) whether the asserted liability has been recorded as such on the books of account of either corporation; and

(c) whether the claim has been rejected, in whole or in part, by the Receiver.

The said schedules are hereby adopted by the Receiver to amend and supersede Exhibits 3-5, inclusive, of the Receiver's Report and Petition of August 1, 1973.

3. Computation of Distributable Cash, Reserves, etc.

(a) Counsellors.

(1) Computation of Distributable Cash Allocable to Counsellors General Fund.

As set forth at ¶39 of the Receiver's Report and Petition, at page 7 thereof (including the footnotes at page 7), \$89,025 of Counsellors' present cash is allocable to the General Fund. There are also outstanding claims for tax refunds totaling \$51,505, which, if as and when collected, will also belong to the General Fund.* In accordance with ¶43 of the Receiver's Report and Petition, no administration expenses are to be charged against the General Fund, nor is any income to be credited to that Fund. (See also ¶17, Receiver's Report and Petition.)

(2) Computation of Distributable Cash Allocable to Counsellors GBP Fund.

As set forth in the Haskins & Sells 12/31/73 Report, p. 4,

* For liquidation purposes in these proceedings, no value may be attributed to the stock of Advisors held by Counsellors, since Counsellors' assets are not sufficient to satisfy the claims of participants in Counsellors' Government Bond Plan and Put and Call Plan (which claims the Court has held are assertible against both Counsellors and Advisors) and since the amount of such insufficiency substantially exceeds Advisors' total assets. (See first footnote, p. 6, Receiver's Report and Petition.)

... fund claims is reflected at p. 4,

Counsellors' cash on hand as of that date was \$2,149,360 plus accrued interest receivable (since matured and collected) of \$10,618, totaling \$2,159,978. To determine the portion of this sum which is allocable to the GBP Fund, the following amounts must be deducted therefrom (see Receiver's Report and Petition, ¶¶17, 43-44):

Cash attributable to Counsellors General Fund	\$ 89,025	
Payable by Counsellors to Advisors for Counsellors' share of the administration expenses paid by Advisors, plus interest thereon, through 12/31/73 (Haskins & Sells 12/31/73 Report, p. 5)		124,942*
Counsellors' accrued and unpaid administration expenses, subject to Court approval, as at 12/31/73, as per Haskins & Sells 12/31/73 Report, p. 5:		
Receiver's fees	\$68,700	
Receiver's attorney's fees	26,450	
Accountants' fees and disbursements.	16,417	
Fees claimed by Conboy, Hewitt, O'Brien & Boardman for services rendered after 3/25/71 - subject to Court approval - (Claim opposed by Receiver)	11,182	
Sundry administration claims	11,177**	
Reserve for estimated income taxes through 12/31/73	<u>138,500***</u>	272,426
Reserve for Claim (opposed by Receiver) of non-GBP pre-administration claimant against GBP Fund (Shearer claim)		<u>12,230</u>
		\$498,623

* This sum was paid by Counsellors to Advisors on 2/25/74.

** Of this amount, \$10,100 is reserved against claim of Aguirre Company (See Schedule 1, Haskins & Sells 12/31/73 Report).

*** \$45,000 of this amount is reflected as a Counsellors liability at p. 5 of the Haskins & Sells 12/31/73 Report. The explanation for the balance of \$93,500 is set forth in the Haskins & Sells supplementary letter dated March 19, 1974 forming part of that Report.

Carried forward from p. 4	\$498,623
Reserve for estimated administration expenses, other than fees of Receiver, Receiver's attorney and accountants for the Receivership, for expenses incurred from January 1, 1974 to the date hereof, and for further expenses through completion of the Receivership	12,500*
Reserve for possible excess of fees of Receiver, Receiver's attorney and accountants for the Receivership, during the period from 1/1/74 through completion of the Receivership, over interest income and unused other reserves	<u>25,000</u>
	\$536,123

\$2,159,978 (the aforesaid cash on hand as at December 31, 1973) less \$536,123 leaves a remaining cash balance, allocable to the GBP Fund, of \$1,623,855. The cash heretofore distributed to GBP Account Balance Claimants came to \$3,033,584 (¶45, Receiver's Report and Petition). Therefore, the net amount of cash allocable to the GBP Fund, as of December 31, 1973, was the sum of these two amounts, namely, \$4,657,439.

(b) Advisors - Computation of Distributable Cash Allocable to Advisors General Fund.**

As set forth in the Haskins & Sells 12/31/73 Report, p. 7, Advisors, as of that date, had \$125,826 in cash plus an account receivable from Counsellors in the sum of \$124,942 (which has since been paid), making a total of \$250,768 in cash or its equivalent. Its non-cash assets, amounting to less than \$100, were

* It is estimated that at least \$7,500 of this amount will be required for expenses of printing, mailing, and computer services.

** There are to be no priorities in the distribution of funds to non-administration claimants against Advisors (see ¶20, Receiver's Report and Petition).

and are insignificant.

From the aforesaid cash of \$250,768 the following reserves must be deducted for administration expenses accrued and unpaid, subject to Court approval, as at 12/31/73 (see p. 7 Haskins & Sellers 12/31/73 Report).

Receiver's fees	\$11,800
Fees of Receiver's attorney	1,550
Fees and disbursements of accountants for Receivership	1,793
Fees claimed by Conboy, Hewitt, O'Brien & Boardman for services rendered after 3/25/71	10,234
Payroll and other taxes payable	680
Sundry claims	53
Accrued office services	596
	<u>\$26,706</u>
Reserve for estimated administration expenses, other than fees of Receiver, Receiver's attorney and accountants for Receivership, from 1/1/74 through completion of Receivership	2,500
Reserve for possible excess of fees of Receiver, Receiver's attorney and accountants for the Receivership, during the period from 1/1/74 through completion of the Receivership, over- interest income and unused other reserves	<u>10,000</u>
	<u>\$39,206</u>

Deducting this amount from the aforesaid cash balance of \$250,768 leaves a remaining balance of \$211,562 as the net assets of Advisors as of December 31, 1973. This compares with the corresponding figure of \$195,000 which had been estimated as the amount of Advisors' net assets as at March 31, 1973 (see ¶48, Receiver's Report and Petition).

4. Basis for Calculation of Distributions to Various Classes of Claimants.

(a) Put Profit Claims.

Exhibit 1 of the Receiver's Report and Petition sets forth the names of the "Put Profit Takers" and their respective Put

Profit Claims, which total \$1,254.82. Pursuant to the recommendation set forth in ¶22 of the Receiver's Report and Petition, these claims are to be paid in full as a first charge against the GBP Fund. Deducting the aforesaid sum of \$1,254.82 from the gross amount of the GBP Fund (\$4,651,439) leaves a balance of \$4,656,184.18 which will hereinafter be referred to as the "Net GBP Fund".

(b) Claims Assertible Against Net GBP Fund.

As set forth at ¶45 of the Receiver's Report and Petition, total GBP Account Balance Claims come to \$5,061,882. This amount includes \$30,370 which, pursuant to ¶¶21 and 38 of the Receiver's Report and Petition, are Abortive GBP Claims entitled to the same priority as GBP Account Balance Claims.

In accordance with the last sentence of ¶17 of the Receiver's Report and Petition, the net GBP Fund, in its entirety, is to be utilized to satisfy GBP Account Balance Claims, pro rata. Accordingly, each GBP Account Balance Claimant will receive, out of the GBP Fund, an amount in the same proportion to his GBP Account Balance Claim as \$4,656,184.18 bears to \$5,061,882. This comes to approximately 91.985238%.

(c) Claims Assertible Against Counsellors General Fund.

As hereinabove set forth, the cash balance of Counsellors General Fund is \$89,025. As set forth at ¶18 of the Receiver's Report and Petition, the following types of claims are assertible against this fund, pro rata:

GBP Account Balance Claims, to the extent not satisfied by the net GBP Fund (GBP Account Balance Deficiencies) \$405,698

Carried forward from p. 7 \$405,698

Claims for GBP Investment Overage computed as follows:

GBP plus Net Investments \$7,393,888*

Less GBP plus Account Balance Claims 5,061,882**

Claims for GBP Investment Overage \$2,332,006

Plus: Adjustment of total to exclude
effect of Account Balances which
are larger than Net Investments .. 33,124 \$2,365,130

PC plus Account Balance Claims ... 79,341**

PC Claims for Investment Overage, computed as
follows (see p. 5, Haskins & Sells 12/31/73 Report):

PC plus Net Investments \$1,672,839***

Less PC plus Account Balance
Claims, above 79,341

PC Claims for Investment Overage \$1,593,498

Plus: Adjustment of total to ex-
clude effect of Account Balances which
are larger than Net Investments 17,486 \$1,610,984

General Claims other than Administration Claims
against Counsellors, as follows: (see p. 10, Haskins
& Sells 12/31/73 Report):

The Claims, recorded on Counsellors' books, which
Receiver recommends be allowed 2,799

100% Reserve for those Claims, recorded on
Counsellors' books, which Receiver recommends
be rejected 322

100% Reserve for Claim of Landlord against Coun-
sellors for damages and deficiencies under
lease, not recorded in Counsellors' books,
which Receiver recommends be rejected 83,178

Total Claims Assertible Against Counsellors'
General Fund \$4,547,452*

* As computed by Receiver's staff, adjusted to date. (See ¶46
of Receiver's Report and Petition).

** As per Haskins & Sells 12/31/73 Report.

*** As computed by Receiver's Staff (see ¶46 of Receiver's Report
and Petition).

**** As set forth at ¶15-16, Receiver's Report and Petition, all
of the Claims for Excess appear to be completely unjustifiable
on their face, and, accordingly, have not been taken into ac-

As hereinabove set forth, the aggregate cash in the General Fund is \$89,025. Accordingly each claimant against Counsellors' General Fund will receive at this time, as a cash distribution on account of his claim, an amount in the same proportion to his claim as \$89,025 bears to \$4,547,452. This comes to 1.9576897%.

In addition, as was previously stated, Counsellors' General Fund has a non-cash balance of \$51,505, consisting, in its entirety, of claims for tax refunds. As, if and when these claims are collected, each claimant against Counsellors' General Fund should receive, as his pro rata share thereof, a further distribution amounting to 1.1326123% of his respective claim.

(d) Claims Assertible Against Advisors' Net Assets.

As previously stated at page 6 above, the net distributable assets of Advisors, after provision for accrued and estimated administration expenses, as at December 31, 1973, came to \$211,562, all of which is presently in the form of cash. The non-administration claims assertible against these net assets are as follows:

Claims for GBP Account Balance Deficiencies to extent not satisfied out of Counsellors' General Fund, computed as follows:

Total GBP Account Balance Deficiencies	\$ 405,698
Less: 1.9576897% thereof to be paid out of Counsellors' General Fund ...	7,942
Balance payable out of Advisors' Net Assets	\$397,756

Claims for GBP Investment Overage to extent not satisfied out of Counsellors' General Fund, computed as follows:

Total GBP Claims for Investment Overage	\$2,365,130
Less: 1.9576897% thereof payable out of Counsellors' General Fund	<u>46,302</u>
Balance payable out of Advisors' Net Assets	\$2,318,828
	\$2,710,584

Carried forward from p. 9 \$2,716,584

Claims for PC Account Balance Claims to extent not satisfied
out of Counsellors' General Fund, computed as follows:

Total PC Account Balance Claims .. \$ 79,341

Less: 1.9576897% thereof to be paid
out of Counsellors' General Fund ... 1,553

Balance payable out of Advisors' Net Assets \$ 77,788

Claims for PC Investment Overage to extent not satisfied out
of Counsellors' General Fund, computed as follows:

Total Claims for PC Investment
Overage \$1,610,984

Less: 1.9576897% thereof to be paid
out of Counsellors' General Fund ... 31,538

Balance payable out of Advisors' Net Assets \$1,579,446

General Claims against Advisors, as follows:

(see p. 11, Haskins & Sells 12/31/73 Report):

Face amount of claims which Receiver
has recommended be allowed \$21,850

Face amount of claims which Receiver
has rejected, other than Claims for
Excess* but including Landlord's
Claim 95,657

Total General Claims Against Advisors 117,507

Total Claims Assertible Against Net
Assets of Advisors \$4,491,325

Thus, each of the claimants against the net assets of Advisors (who, as aforesaid, are entitled to share the same pro rata) will receive at this time, as a cash distribution on account of his claim, an amount in the same proportion to his claim as the net assets of Advisors (\$211,562) bear to \$4,491,325. This comes to 4.7104584%.

* As set forth at ¶15-16, Receiver's Report and Petition, all of the Claims for Excess appear to be completely unjustifiable on their face, and accordingly they have not been taken into account, for purposes of this report, in computing the claims assertible.

(e) Percentages of the Aggregate Amounts of the Respective Types of Claims Which Will Be Distributed, At this Time, to all Claimants Thereof:

(1) GBP Account Balance Claimants Who Also Have Claims for Investment Overage

Total Distributions Payable out of Net GBP Fund (entire balance of that fund) \$4,656,184

Total Distributions Payable out of Counsellors' General Fund:

For GBP Account Balance Deficiencies, 1.9576897% of \$405,698, or ... \$ 7,942

For GBP Investment Overage, 1.9576897% of \$2,365,130, or 46,302

Total Distributions out of Counsellors' General Fund 54,244

Total Distributions Payable Out of Advisors' Net Assets:

Claims for GBP Investment Overage ... \$2,365,130

Plus: Claims for GBP Account Balance Deficiencies 405,698

Less: To Be Received out of General Fund from (a) Account Balance Deficiencies (\$ 7,942) and (b) Claims for Investment Overage (\$46,302) ... 54,244

Net Claims against Advisors' Net Assets \$2,716,584

Distribution out of Advisors' Net Assets

4.7104584% of \$2,716,584, or 127,963

Total Cash Distributions Out of GBP Fund, Counsellors' General Fund and Advisors' Net Assets: \$4,838,391

Since the aggregate GBP Account Balance Claims come to \$5,061,882 (see above) and the above total cash distributions on account thereof come to \$4,838,391, those GBP Account Balance Claimants who also have Claims for Investment Overage will receive, in the aggregate, cash distributions totaling 95.564824% of their

aggregate GBP Account Balance Claims. It must be emphasized, however, that this percentage is an average and that the exact percentage which each GBP Account Balance Claimant will receive at this time will in most cases be slightly less, or slightly more, than 95.584824% depending primarily on the relative size of the claimant's Claim for Investment Overage. However, every GBP Account Balance Claimant will receive at least 91.985238% of his GBP Account Balance Claim; this percentage being derived from his pro rata share of the GBP Fund.

(2) GBP Account Balance Claimants Who Do Not Have a Claim for Investment Overage.

There are only a few claimants in this category and, as aforesaid, each of them will receive 91.985238% of his claim, derived from his pro rata share of the GBP Fund. In addition thereto, in common with the claimants in Class (1) above, he will receive a very small additional increment of his claim attributable to his Account Balance Deficiency Claim against Counsellors' General Fund and Advisors' Net Assets.

(3) GBP Claimants for Investment Overage Who Have No GBP Account Balance Claims, PC Account Balance Claimants and PC Claimants for Investment Overage.

As hereinabove set forth, these classes of claimants are entitled to assert their claims (a) against Counsellors' General Fund, and (b) against the net assets of Advisors, and they, along with other claimants, are entitled to participate in those respective funds on a pro rata basis. As was hereinabove set forth, as claimants against Counsellors' General Fund, they are entitled to receive 1.9576897% of their respective claims, and as claimants against the net assets of Advisors they are entitled to receive 4.7104584% of the same claims. Their combined total percentage

recovery comes to 6.6681481% of their claims.*

(4) General Claims Against Counsellors.

Upon reconsideration (Cf. ¶20, Receiver's Report and Petition) general claims against Counsellors should be allowed only against Counsellors' General Fund; and not against Advisors' Net Assets. Accordingly, as hereinabove set forth, general claims against Counsellors' General Fund are entitled to a distribution of 1.9576897% of the face amount thereof. However, in the interest of conservatism, this percentage (a) assumes that all rejected general claims against Counsellors (other than Claims for Excess) will be eventually allowed in full by the Court, and (b) does not take into account the future collection of the approximately \$51,500 in tax refund claims, all of which, being attributed to the period prior to March 26, 1971, belong to the General Fund. If the bulk of the rejected claims are disallowed by the Court or the bulk of the tax refunds are eventually collected, the aggregate distributions to this class of claimants will be slightly higher.

(5) General Claims Against the Net Assets of Advisor

General claims against the net assets of Advisors are, as hereinabove set forth, entitled to distribution of 4.7104584% of the respective face amounts of such respective claims.

5. Distribution Schedules.

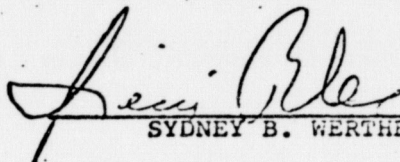
The attached Distribution Schedules, which are subdivided into Schedule A - Government Bond Plan Participants, Schedule B - Put and Call Plan Participants, and Schedules C-1 and C-2 - General

* Technically, it might be contended that, as to these claimants the amount receivable by them out of Counsellors' General Fund should be deducted from their aggregate claims and only the difference should be allowed as a claim against the net assets of Advisors. However, the differences are miniscule and have been disregarded.

Claimants, reflect the distributions recommended to each respective claimant on the basis hereof.

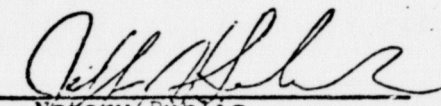
6. Detailed Summary of Reasons for Receiver's Rejection of all Claims for Excess.

Exhibit 2 of this Supplemental Report is a detailed summary of Receiver's reasons for rejecting each of the Claims for Excess.


SYDNEY B. WERTHEIMER

Sworn to before me this.

25th day of March, 1974


Notary Public
JEFFREY A. WERTHEIMER
Notary Public, State of New York
No. 19,125
Qualified in Westchester County
Term Expires March 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	U. S. District Court
	:	Filed
Plaintiff,	:	April 23, 1974
	:	S. D. of N. Y.
-against-	:	
CAPITAL COUNSELLORS, INC., CAPITAL	:	71 Civ. 1390
ADVISORS, INC., J. IRVING WEISS,	:	
ABRAHAM B. WEISS,	:	<u>O R D E R</u>
Defendants.	:	

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SYDNEY B. WERTHEIMER, as Receiver for Capital Counsellors, Inc. ("Counsellors") and Capital Advisors, Inc. ("Advisors"), having duly filed his Report and Petition dated August 1, 1973 and sworn to August 7, 1973, which Report and Petition, among other things, sets forth his accounts as Receiver from January 1, 1972 through March 31, 1973, and his detailed recommendations with respect to allowance of claims and the priorities to be accorded to the various classes of claims and claimants,

And the said Report and Petition having prayed for:

- (a) the Court's approval of the said accounts,
- (b) the Court's determination as to what further proofs, if any, need be submitted by "deemed" claimants herein, and when and how such proofs should be submitted,
- (c) the Court's disposition of the "Claims for Excess" heretofore filed herein, and of such other claims as have been heretofore duly and timely submitted to the Receiver,
- (d) the Court's determination of the relative

priority to be accorded to all allowed claims, including a determination against what respective assets the respective claims should be satisfied and whether the assets of either Counsellors or Advisors should be deemed impressed with the trust in favor of any class or classes of claimants,

(e) the Court's approval of further interim allowances to the Receiver, his attorney, and the accountant for the receivership estate, and

(f) the removal of certain restraints, heretofore imposed by prior court order, on the disposition of certain other funds remaining in the Receiver's hands, and such other relief as may seem just and proper,

And the Court thereupon, by order to show cause dated August 8, 1973, having ordered all claimants against Counsellors, Advisors, or both, to show cause on September 12, 1973 why the aforesaid relief prayed for by the Receiver should not be granted, that said order to show cause be published as more particularly provided therein, and that copies thereof, together with copies of the aforesaid Report and Petition, and the exhibits thereto, be mailed or delivered to the persons specified therein, and due proof having been filed herein of such publication, and of the mailing or delivery of such copies,

And this matter having duly come on to be heard before me on September 12, 1973, and the said Receiver and his attorney, Leon Leighton, having appeared in support of the relief prayed for, and the Receiver having duly served and filed affidavits dated September 21, 1973 and October 15, 1973, and his said attorney having duly served and filed an affidavit dated

September 20, 1973, in support of the allowances claimed, and Aguirre Company, by Kramer, Marx, Greenlee & Backus, its attorneys (John J. Hayes, of Counsel) and Hudson Rosenblatt, pro se, having appeared in opposition thereto and having filed written objections, and A. R. Ketchum and Ethel E. Ketchum, by Butowsky, Schwen & Devine (Michael Devine, of Counsel) having appeared and orally objected thereto, and the Securities and Exchange Commission, by Donald M. Malawsky, Assistant Regional Administrator and Roger Deitz, Regional Attorney, having appeared without objection except as to allowances requested by the Receiver and his attorney, and Julien, Glaser, Blitz & Schlesinger, as attorneys for Donald M. Wilk, et al. (Stuart Schlesinger, of Counsel) having appeared and expressed approval of the relief prayed for, and Conboy, Hewitt, O'Brien & Boardman (David Mountan, of Counsel) having appeared pro se in opposition thereto and also having stated that, as attorney for the defendants Weiss, they had received no instructions from their clients and accordingly took no position, and no other persons having appeared or having filed objections to the said Report and Petition,

And the Receiver on September 13, 1973 having filed herein his affidavit, sworn to September 13, 1973, correcting certain typographical errors in the said Report and Petition, a copy of which affidavit, in pertinent part, is annexed hereto as Appendix I hereof,

And, after due deliberation, the Court having rendered its opinion dated January 8, 1974, approving the recommendations set forth in the Report and Petition, deferring determination of the award of fees to the Receiver and his counsel and directing that the Receiver submit the within detailed order upon notice,

in accordance with the said opinion,

And the Receiver having submitted in affidavit form, his Supplemental Report, sworn to March 25, 1974 (hereinafter the "Supplemental Report"), a copy of which is attached hereto and made part hereof, which (a) supplements his accounts so as to include all transactions from April 1, 1973 through December 31, 1973, in order to enable the distribution proposed at this time to take into account the net income of Counsellors and Advisors during that period, (b) sets forth in detail the basis for the calculations of the aggregate amount of cash to be distributed to claimants at this time and the reserves and residual non-cash assets which will remain for later distribution, (c) sets forth the amount presently distributable to each claimant on the basis of the Receiver's recommendations approved in the aforesaid opinion and embodied in the within order, and (d) sets forth, in detail, the reasons for the Receiver's recommendation that each and every Claim for Excess be disallowed by the Court, and the Receiver having filed proof of service of copies of the said Supplemental Report and of notice of settlement of the within order, upon the persons who appeared at the aforesaid hearing, or their respective attorneys,

NOW, THEREFORE, it is

ORDERED that the Receiver's accounts for the period from January 1, 1972 to March 31, 1973, and from April 1, 1973 through December 31, 1973, as set forth in the Report and Petition, as supplemented by the Supplemental Report, be, and the same hereby are, approved, and it is further

ORDERED that, subject to the further provisions of this order relating to the priority of the various classes of claims, the corporate entity, fund or assets against which each such class

of claims may be asserted and the manner of computing the distribution payable on account of each allowed claim, no further proofs need be submitted in support of any of the following claims, and that such claims be allowed as valid claims against Counsellors and Advisors:

(a) the GBP Account Balance Claims and the GBP Claims for Investment Overage, in the respective amounts, and in favor of the respective persons, set forth in Columns 2, 4 and 7 of Schedule A of the Supplemental Report;

(b) the PC Account Balance Claims and the PC Claims for Investment Overage, in the respective amounts, and in favor of the respective persons, set forth in Columns 1, 3 and 4 of Schedule B of the Supplemental Report;

(c) the following Put Profit Claims:

Martin J. Rovik and Lora P. Rovik	\$338.20
Marie P. Richards	338.20
Thomas Moss	120.12
William G. Richardson	120.12
John R. Bromley	169.09
George Maggs	169.09

(d) the following Abortive GBP Claims:

Stanley S. Bitler	\$5,062.32
Chester Gaszynski	10,124.60
Mrs. Hedwig Kirsch	5,076.94
Emaus C. Pearson	5,049.49
Theodore A. Tepke	5,056.20

(e) the sundry claims against Counsellors for goods sold and services rendered prior to March 26, 1971, set forth as such in Schedule 1 of the Haskins & Sells December 31, 1973 Report (which Report is Exhibit 1 of the Supplemental Report), except the claim indicated in such Schedule as having been rejected by the Receiver; all of such claims as were not rejected

to be allowed against Counsellors only, and not against Advisors; and

(f) the sundry claims against Advisors for goods sold and services rendered prior to March 26, 1971, set forth as such in Schedule 2 of the said Haskins & Sells December 31, 1973 Report, except to the extent such claims, as indicated in such Schedule, have been rejected by the Receiver; all of such claims, or parts of claims, as were not rejected to be allowed against Advisors only, and not against Counsellors, and it is further

ORDERED that the following Claims for Excess, which are listed in Exhibit 4 of the Report and Petition, and all of which have been heretofore rejected by the Receiver for reasons set forth in detail in Exhibit 2 of the Supplemental Report, be and the same hereby are disallowed in their entirety:

<u>Government Bond Plan</u>	<u>Amount of Claim</u>	<u>Against</u>
Hortense Constance Judge	\$18,444.97	Counsellors
Howard Plaut, as Trustee	3,005.31	Counsellors
Howard Plaut	24,325.44	Counsellors
Jack Greenhouse	564.69	Counsellors
Margaret Gorsuch	10,000.00	Counsellors
Norman Godfrey	17,500.00	Counsellors
Hezekiah W. Carroll	6,393.30	Counsellors and Advisors
Robert G. Michaels	11,150.00	Counsellors
Irving and Lillian Goldberg	1,633.52	Counsellors and Advisors
Sydelle Nadler	10,000.00	Counsellors and Advisors
<u>Put and Call Plan</u>		
Harry M. Tonkin	89.66	not indicated
Hudson Rosenblatt	20,276.74	Counsellors and Advisors
Margaret Gorsuch	4,926.78	Counsellors and Advisors
Sydelle Nadler	5,000.00	Counsellors and Advisors

and it is further

ORDERED that the following persons whose claims were rejected, in whole or in part, by the Receiver, as set forth in Schedule 1 and Schedule 2 of the Haskins & Sells December 31, 1973 Report, shall file with the Court, prior to May 22, 1974, a verified statement setting forth in detail the basis of such rejected claim or part thereof, upon receipt of which statements the Court shall determine whether a hearing is necessary, and if so, before whom such hearing is to be held:

Rejected Claims Against Counsellors:

Chase Manhattan Bank	\$ 322
Aguirre Company	93,278

Rejected Claims Against Advisors:

A. Rejected Pre-Administration Claims

Atlantic Fund	1,131
Bingham Seigert	59
Filtered Water	977
Mailers Photocopy Corp.	68
R. L. Polk	37
Promotion Mail Associates	107

B. Rejected Administration Claims

Filtered Water	48
R. L. Polk	5

and that after such hearing, or the Court's determination that a hearing is not necessary, the claim will be adjudicated, and it is further

ORDERED that each of the Put Profit Claims hereinabove listed be paid in full, and it is further

ORDERED that the Abortive GBP Claims are entitled to share in the GBP Fund, Counsellors' General Fund and Advisors' Net Assets on the same parity with, and with the same force and effect as if they were, GBP Account Balance Claims in the same respective amounts, and it is further

ORDERED that in light of the Receiver's rejection, as of October 30, 1971, of Counsellors' sublease from Aguirre Company,

as part of the administration expense reserves of Counsellors, to cover any claim which may be allowed for such use and occupation, is an ample reserve under the circumstances, the Receiver shall not be required to retain any other or further reserve to defray the Aguirre Company's claim for use and occupation of the premises, as aforesaid, or for any other claim or demand embraced in Aguirre Company's proof of claim filed herein, and it is further

ORDERED that fixation of the allowances of the Receiver, his attorney, and of Haskins & Sells, the accountants for the estate, be deferred until further order of the Court, and it is further

ORDERED that determination of the claims of Conboy, Hewitt, O'Brien & Boardman (other than as a general claimant against Counsellors in the amount listed in Schedule 1 of the Haskins & Sells December 31, 1973 Report), and the claim of Aaron and Virginia Shearer for approximately \$12,230, reserved for at p. 4 of the Supplemental Report, be deferred until further order of the Court, and it is further

ORDERED that the recommendations and conclusions contained in the Receiver's Report and Petition, as supplemented and modified by the Supplemental Report, with respect to

(a) the relative priority to be accorded to all allowed claims,

(b) the corporate entity, fund and assets (including, without limitation, the "GBP Fund" and "General Fund" of Counsellors and the "Net Assets" of Advisors, as therein defined and calculated), against which each class of claims may be satisfied,

(c) the basis for the calculation of the aggregate amount of cash to be distributed at this time, and

(d) the reserves to be maintained

be, and the same hereby are, ratified and approved, and without limiting the generality of the within paragraph of this Order, it is further

ORDERED that commencing as of March 25, 1971, the date of inception of this Court's jurisdiction over the assets and affairs of Counsellors and Advisors, the assets comprising the said "GBP Fund" shall, subject to the aforesaid recommendations and conclusions of the Receiver's Report and Petition and Supplemental Report, and to all the terms of the within Order, be deemed impressed with a trust in favor of the GBP Account Balance Claimants, and it is further

ORDERED that distribution be made to the following respective persons named in, and in the following respective amounts set forth in, the following Schedules of the Receiver's Supplemental Report:

Columns 2 and 14 of Schedule A;

Columns 1 and 7 of Schedule B; and

Columns 1 and 3 of each of Schedules C-1 and C-2;

and that all of the computations set forth in each of such Schedules be, and the same hereby are, approved, and it is further

ORDERED that the Receiver be, and he hereby is, discharged of any and all liability or responsibility with respect to the funds now or heretofore deposited at Chase Manhattan Bank, 1 Chase Manhattan Plaza, in each of the five accounts described and entitled as follows:

Demand Deposit Accounts:

<u>Acct. No.</u>	<u>Title of Account</u>
910-1-363415	Sydney B. Wertheimer, as Receiver - Weiss Indemnity Account
910-1-362698	Capital Counsellors Escrow Account
910-1-362342	Capital Advisors Escrow Account

Time Deposit Accounts:Title of Account

Sydney B. Wertheimer, as Receiver for Capital Advisors, Inc. - Money and Credit Subscription Indemnity Fund Time Deposit (referred to at p. 11 of the Report and Petition as "Subscription Indemnity Account No. 1")

Sydney B. Wertheimer as Receiver for Capital Advisors, Inc. - Money and Credit Supplementary Escrow Time Deposit (referred to at p. 11 of the Report and Petition as "Subscription Indemnity Account No. 2")

other than to dispose of the same, or the proceeds thereof, in accordance with his general duties and responsibilities as Receiver herein, and that, without limiting the generality of the foregoing, the Receiver, at his discretion, may deposit the proceeds of any one or more of the aforesaid five bank accounts, or any part thereof, into any other demand or time deposit account now or hereafter maintained by the Receiver, and it is further

ORDERED that this Court continue to retain jurisdiction herein, including, without limitation, jurisdiction over the disposition of such claims rejected by the Receiver as have not been disallowed by the terms of this Order, and jurisdiction over the disposition of the assets which, after making the distributions herein provided for, will remain in the Receiver's hands, and it is further

ORDERED that notice of any such further application with respect to the distribution of such assets as the Receiver, or the Securities and Exchange Commission, may see fit to make

need be given only to the parties, hereinabove named, who appeared herein on September 12, 1973.

4/22/74

Dated: April 22, 1974

IBC

5:30 P.M.

/s/ IRVING BEN COOPER
 IRVING BEN COOPER
 United States District Judge

SCHEDULE C - COMPUTATION OF DISTRIBUTIONS TO GENERAL CLAIMANTS

C-1. CLAIMANTS AGAINST COUNSELLORS

(1) NAME	(2) AMOUNT OF ALLOWED CLAIM OR PORTION OF CLAIM	(3) DISTRIBUTION PAYABLE	(4) RESERVE FOR PAYMENT OF REJECTED CLAIMS- COUNSELLORS GEN FUND
CONBOY, HEWITT, O'BRIEN & BOARDMAN	\$ 2,098	\$ 41.07	
PORTLAND PRINTING	629	12.31	
CLAGGETT OFFUTT	72	1.41	
	<hr/> \$ 2,799	<hr/> \$ 54.79	<hr/> \$ 1634.67

C-2. CLAIMANTS AGAINST ADVISORS

(1) NAME	(2) AMOUNT OF ALLOWED CLAIM OR PORTION OF CLAIM	(3) DISTRIBUTION PAYABLE	(4) RESERVE FOR PAYMENT OF REJECTED CLAIMS- ADVISORS NET ASSETS
BINGHAM SEIGERT	\$ 302	\$ 14.23	
DONALD M. BROWN	700	32.97	
JOHN A. BRUNS, INC	141	6.64	
BUSINESS LETTER SERVICE	3,060	144.14	
BUSINESS LETTER SERVICE, INC	3,725	175.46	
BUSINESS PHOTO-REPRODUCTIONS, INC	2,532	119.27	
CARTE BLANCHE	280	13.19	
THE COACHMAN	19	.89	
COMMERCE CLEARING HOUSE	96	4.52	
CONSOLIDATED EDISON CONST. CO.	75	3.53	
DIRECT MAIL IN NEW YORK	70	3.30	
FILTERED WATER	108	5.09	
GOLDSMITH BROTHERS	15	.71	
KING LITHOGRAPHICS, INC.	1,680	79.14	
MAILERS PHOTOCOPY CORP.	182	8.57	
MAXWELL HOUSE	30	1.41	
MOHAWK AIRLINES	18	.85	
PRENTICE HALL, INC.	117	6.45	
PROMOTION MAIL ASSOCIATES	5,149	242.54	
PRUDENTIAL BUILDING MAINTENANCE	236	11.12	
J. P. SUESS COMPANY	11	.52	
TRANSO ENVELOPE COMPANY	3,265	153.80	
WALL STREET MOVING & STORAGE	19	.89	
	<hr/> \$21,850	<hr/> \$1029.23	<hr/> \$4505.88

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff-Appellee,	:	
v.	:	
CAPITAL COUNSELLORS, INC., CAPITAL ADVISORS,	:	No. 74-2023
INC., J. IRVING WEISS, ABRAHAM B. WEISS,	:	
Defendants.	:	
CONBOY, HEWITT, O'BRIEN & BOARDMAN,	:	<u>CERTIFICATE OF SERVICE</u>
Appellant,	:	
v.	:	
SYDNEY B. WERTHEIMER,	:	
Receiver-Appellee.	:	

I hereby certify that on December 2, 1974, I served, by United States mail, postage prepaid, two copies of the Memorandum of the Securities and Exchange Commission, Appellee in the above case, and one copy of the Commission's Supplemental Appendix, upon the following persons:

Hobart L. Brinsmade, Esquire
David J. Mountan, Jr., Esquire
Conboy, Hewitt, O'Brien & Boardman
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